

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

In the matter of an application for Leave to Appeal under Section 5C(i) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

Renuka Withanachchi,
of No. 109D, Medaweraniya,
Thittapattara.

Substituted Plaintiff-Respondent-

Petitioner-Appellant

**SC Appeal No: 167/2016
SC(HC)CALA No. 168/2014
SP/HCCA/GA/0142/2004 (F)
DC Elpitiya Case No. P/1328**

Vs.

Pallage Jinadasa (Deseased),
of Iddagoda, Kahaduwa.

**10th Defendant-Appellant-
Respondent**

10A. Kooragodage Gunawathie,
10B. Pallage Wasantha Hema Kumara,
10C. Pallage Mallika,
10D. Pallage Gamini Ajith Kumara,

10E. Pallage Priyantha,
10F. Pallage Deepa Nishanthi,

All of Iddagoda, Kahaduwa.

**Substituted 10A to 10F Defendant-
Appellant-Respondents**

1. Sanath Gunawardena (Deceased),

Sanath Raveendra Prasantha Gunawardena.

**Substituted 1st Defendant-
Respondent-Respondent**

2. S.L. Amarasekara nee Gunawardena,
3. Wimala Gunawardena,
4. Kalyanawathie Gunawardena,
All of Waturawila, Kahaduwa.

5. Chandra Gunawardena (Deceased)

- 5A. Sunith Karunatileke,
of Niyagama, Talgaswela.

6. A.A. Gunawardena,
of Waturawila, Kahaduwa.

7. Punchi Singho (Deceased)

- 7A. Pallage Indrasiri,
Pallegoda, Kahaduwa.

8. Poddiwela Marage John,
9. Poddiwela Marage David,
Both of Iddagoda, Kahaduwa.

11. Arthur Samuel De Silva (Deceased),

11A.S.F. Alahakoon,
of “Wasuki”, Agalia,
Baddegama.

12. Pallege Podinona,
13. Pallege Karunawathie,
14. Pallege Uberis,
15. Pallege Podihamy,
16. Pallege Babynona,
17. Pallege Pemadasa,
18. Pallege Kodikara Jayasinghe,
All of Iddagoda, Kahaduwa.

19. Ariyapala Anawaratne Gunawardena,
of Wathurawila, Kahaduwa.

Defendants-Respondents-Respondents

Before: **Justice S. Thurairaja, PC**
 Justice A.L. Shiran Gooneratne
 Justice Mahinda Samayawardhena

Counsel: Ranjan Goonerathne for the **Substituted-Plaintiff-Respondent-Appellant.**
 Navin Marapana, PC with Saumya Hettiarachchi for the **1A-7A Defendants-Respondents-Respondents.**

 Dr. Sunil Abeyrathna with M. Kudakolowa instructed by Buddhika Alagiyawanna for the **10A-10F Substituted-Defendants-Appellants-Respondents.**

Argued on: 19/10/2022

Decided on: 15/12/2022

A.L. Shiran Gooneratne J.

The original Plaintiff-Respondent-Appellant (hereinafter referred to as the Plaintiff) instituted this action against the original 10th Defendant-Appellant-Respondent (hereinafter referred to as the 10th Defendant) in the District Court of Elpitiya to partition a land called 'Iddagoda Owita' in extent 5 acres, morefully described in the schedule to the amended Plaint dated 18/05/1994. In the pleadings, the Plaintiff specifically denied that the 10th Defendant had any rights over the corpus to be partitioned.

In the answer dated 25/07/1990, the 10th Defendant disclosed several parties seeking to intervene, purportedly claiming long possession of the land and also stated that Lot 3 shown as a roadway in Plan No. 2808 does not form part of the corpus.

At the conclusion of the trial the learned District Judge by Judgment dated 29/11/2004, *inter alia*, identified the land depicted in Lot 1, 2 and 3 in Plan No. 2808 as the corpus to be partitioned.

Aggrieved by the said Judgment, the 10th Defendant preferred an appeal to the Civil Appellate High Court of Galle. The Appellate Court by its Judgment dated 12/03/2014, set aside the Judgment of the District Court and held that the learned District Judge has failed to identify the corpus and therefore, the Plaintiff is not entitled to a judgment in terms of the Partition Act.

The Plaintiff is before this Court to set aside the said Judgement dated 12/03/2014.

This Court by Order dated 21/09/2016, granted Leave to Appeal in terms of paragraph 15(a) of Petition of Appeal dated 08/04/2014, which states as follows;

“once the parties admit the corpus sought to be partitioned, at the commencement, are the parties required to adduce evidence to identify the corpus, notwithstanding the admission.”

The Plaintiff’s position is that at the commencement of the trial all parties including the 10th Defendant admitted that Lots 1, 2 and 3 in the Preliminary Plan No. 2808 dated 29/10/1989, made by licenced surveyor D.G. Mendis marked ‘X’, form the corpus of the land sought to be partitioned. It was contended that when the corpus to be partitioned is identified and admitted by the parties, then the Court should act upon the said Preliminary Plan and thereafter no onus is cast upon the parties to adduce further evidence to establish that the said plan relates to the corpus sought to be partitioned.

The 10th Defendant’s appeal against the Judgment of the District Court was on the basis that the admission of the Preliminary Plan No. 2808, dated 29/10/1989, marked ‘X’ made by licenced surveyor D. G. Mendis was misinterpreted by the District Court. The 10th Respondent claims title to a land called “Iddagoda Owita Pahala Kaballa”. In paragraph 2 of the answer of the 10th Defendant, the boundaries of the said land are described as “Iddagoda Owita Pahala Kaballa”. In the same paragraph, it is admitted that the said land is morefully depicted as Lot 1, 2 and 3 of the said Preliminary Surveyor Plan No. 2808. The pleaded case of the 10th Defendant was that the land described as “Iddagoda Owita Pahala Kaballa” was within the land described in the Preliminary Plan.

On 23/02/1999, when the admissions were recorded, all parties including the 10th Defendant explicitly admitted that Lot 1, 2 and 3 in Plan No. 2808 forms the corpus of the land sought to be partitioned.

The admissions recorded on the said date reads as follows;

1. මෙම නඩුවට ගොනුකර ඇති ඩී.ජී. මෙන්ඩිස් මහතාගේ 1989/10/29 දිනැති අංක 2808 දරණ පිඹුරේ ලොට් 1, 2 සහ 3 වශයෙන් පෙන්වා ඇති කැබලි වලින් සමන්විත වූ ඉඩම විෂය වස්තුව බව පාර්ශවකරුවන් පිළිගනී.
2. අංක 3 දරණ කැබැල්ල පාර වශයෙන් ඒ ආකාරයෙන් පැවතිය යුතු බව පාර්ශවකරුවන් පිළිගනී.

The 10th Defendant's claim on the land to be partitioned is grounded on Deed No. 9877 dated 04/01/1927. In cross examination, answering a preliminary question of fact, the 10th Defendant admitted that the property called "Iddagoda Owita comprise of "Iddagoda Owita Pahala Kaballa", "Iddagoda Owita Ihala Kaballa" and the centre road which forms the corpus to be partitioned. Thereafter, on several occasions during cross examination the 10th Defendant admitted that the land surveyed was the correct land and it consists of extent 5 acres 8 perches. The 10th Respondent also admitted the defined boundary of Lot 3 in Plan 'X' which divides Lot 1 and 2 as a roadway.

The boundaries of the corpus sought to be partitioned in Plan 'X' and the boundaries of the land described in the schedule to the Amended Complaint are identical. As noted above, the 10th Defendant in his answer admitted that the corpus to be partitioned is depicted in Plan No. 2808, marked 'X'. At no point had the parties including the 10th Defendant were at variance regarding the identity of the corpus and there is no evidence led that the land claimed by the 10th Defendant is a specific portion of a larger land. The 10th Defendant failed to adduce any evidence to prove that the land described as "Iddagoda Owita Pahala Kaballa" was a different land from that what was sought to be partitioned.

The 10th Defendant's said admission of the corpus to be partitioned is a fact admitted at the hearing which needs no further proof in terms of Section 58 of the Evidence Ordinance.

In similar circumstances, on the question of permissibility to withdraw an admission, Fernando J. in *Uvais vs. Punyawathie*, (1993) 2 SLR 46, declared that “*It is sometimes permissible to withdraw admissions on questions of law but admissions on questions of fact cannot be withdrawn*”. Permitting withdrawal of admissions was observed to subvert some of the most fundamental principles of the Civil Procedure Code in regard to pleadings and issues.

In *Mariammai vs. Pethrupillai* 21 NLR 200, it was held that;

“*if a party in a case makes an admission for whatever reason, he must stand by it; it is impossible for him to argue a point on appeal which he formally gave up in the court below*”.

Similarly, in *Jayalath vs. Karunathilake* (2013) 1 SLR 337, the Court held that;

“*if the subject matter is admitted no further proof of the identity of the corpus is required; for no party is burdened with adducing further proof of an admitted fact*”.

The 10th Defendant’s express and unambiguous admission is that Lots 1, 2 and 3 in the Preliminary Plan No. 2808, dated 29/10/1989, marked ‘X’ made by licenced surveyor D.G. Mendis forms the corpus sought to be partitioned. The 10th Defendant is bound by the said admission and cannot be permitted to digress from the said assertion.

Therefore, we find that the learned District Judge did not err in relying on the said admission made at the commencement of the hearing to satisfy himself of the identity of the land sought to be partitioned.

Accordingly, the question posed by the Plaintiff-Respondent-Appellant is answered in the negative.

The Judgement of the Civil Appeal High Court dated 12/03/2014 is set aside and the appeal is allowed.

Appeal allowed. No costs ordered.

Judge of the Supreme Court

S. Thuraiaraja, PC. J.

I agree

Judge of the Supreme Court

Mahinda Samayawardhena J.

I agree

Judge of the Supreme Court