

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

In the matter of an appeal under Section 5C of the High Court of the Provinces (Special Provisions) (Amendment Act) No. 54 of 2006 read with Article 128(4) of the Constitution of the Republic of Sri Lanka.

SC Appeal No. 158/2017

SC/HCCA/LA/No. 40/2015

WP/HCCA/GAM/223/2009(F)

D.C. Gampaha Case No. 31186/P

1. Welivita Angoda Liyanage
Pathma Jayasinghe

2. Somachandra Thirimanna

(Deceased)

Both of,
No. 281,
Kadawatha Road,
Ganemulla.

PLAINTIFFS

2a. Welivita Angoda Liyanage
Pathma Jayasinghe
No. 281,
Kadawatha Road,
Ganemulla.

SUBSTITUTED PLAINTIFF

Vs.

1. Kariyapperuma Arachchige Dona
Ramya Siriwardana

2. Kariyapperuma Arachchige Don
Sarah Bandula Siriwardana

3. Kariyapperuma Arachchige Don
Ravindra Maldeniya Siriwardana

4. Kariyapperuma Arachchige Dona
Wasanthi Siriwardana

All of,
No. 07,
Kendaliyadda Paluwa,
Ganemulla.

5. Kariyapperuma Arachchige Don
Herath Singho
No. 50,
Kendaliyadda Paluwa,
Ganemulla

6. W.A.Sumanawathie
No. 281A,
Kadawatha Road,
Ganemulla.

7. K.A.D. Heras Singho
(Deceased)
Kendaliyadda Paluwa,
Ganemulla

7a. Amara Kariyapperuma
No. 50,
Kendaliyadda Paluwa,
Ganemulla

8. M.A. Rejanona

No. 52,
Kendaliyadda Paluwa,
Ganemulla

9. S. Weerarathna

10. L. Jayasinghe

11. K.A. Jayasinghe

12. J.A.D.J.A. Ranasinghe

13. P.A.A. Ranasinghe

14. K.A. Jayasinghe

All of,
No. 52/1,
Kendaliyadda Paluwa,
Ganemulla

15. Pathma Ranasinghe,
No. 281/A,
Kadawatha Road,
Ganemulla.

DEFENDANTS

AND THEN BETWEEN

Welivita Angoda Liyanage
Pathma Jayasinghe
No. 281,
Kadawatha Road,
Ganemulla.

1st AND 2^A PLAINTIFF-
APPELLANT

Vs.

1. Kariyapperuma Arachchige Dona
Ramya Siriwardana

2. Kariyapperuma Arachchige Don
Sarah Bandula Siriwardana

3. Kariyapperuma Arachchige Don
Ravindra Maldeniya Siriwardana

4. Kariyapperuma Arachchige Dona
Wasanthi Siriwardana

All of,
No. 07,
Kendaliyadda Paluwa,
Ganemulla.

5. Kariyapperuma Arachchige Don
Herath Singho
No. 50,
Kendaliyadda Paluwa,
Ganemulla

6. W.A.Sumanawathie
No. 281A,
Kadawatha Road,
Ganemulla.

7. K.A.D. Heras Singho

(Deceased)

Kendaliyadda Paluwa,

Ganemulla

7a. Amara Kariyapperuma

No. 50,

Kendaliyadda Paluwa,

Ganemulla

8. M.A. Rejanona **(Deceased)**

No. 52,

Kendaliyadda Paluwa,

Ganemulla

9. S. Weerarathna

10. L. Jayasinghe

11. K.A. Jayasinghe

12. J.A.D.J.A. Ranasinghe

13. P.A.A. Ranasinghe

14. K.A. Jayasinghe

All of,

No. 52/1,

Kendaliyadda Paluwa,

Ganemulla

15. Pathma Ranasinghe,

No. 281/A,

Kadawatha Road,

Ganemulla.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

1. Kariyapperuma Arachchige Dona
Ramya Siriwardana (**Deceased**)

1a. Nimal Chandrasiri Pinnagoda

1b. Seran Mahesha Liyanaarachchi

1c. Raveen Thushara Liyanaarachchi

2. Kariyapperuma Arachchige Don
Sarah Bandula Siriwardana

3. Kariyapperuma Arachchige Don
Ravindra Maldeniya Siriwardana

4. Kariyapperuma Arachchige Dona
Wasanthi Siriwardana

All of,
No. 07,
Kendaliyadda Paluwa,
Ganemulla.

7a. Amara Kariyapperuma
(**Deceased**)
No. 50,
Kendaliyadda Paluwa,
Ganemulla

7a(i). Chaminda Janaka Withana
Arachchi

7a(ii). Mudithani Chaturika Piyadasa
Withana Arachchi

7a(iii). Pushpika Chadranath Witana
Arachchi

All of,
No. 50,
Kendaliyadda Paluwa,
Ganemulla

1st TO 4th AND 7a(i) TO 7a(iii)
DEFENDANT-RESPONDENTS-
APPELLANTS

Vs.

1st and 2A. Welivita Angoda Liyanage
Pathma Jayasinghe

1A and 2B. Hemamala Priyanthi Thirimanna

1B and 2C. Seetha Damayanthy Thirimanna

1C and 2D. Thanuja Dammika Thirimanna

All of,
No. 281,
Kadawatha Road,
Ganemulla.

PLAINTIFF-APPELLANT-
RESPONDENTS

5. Kariyapperuma Arachchige Don
Herath Singho
No. 50,
Kendaliyadda Paluwa,
Ganemulla
6. W.A.Sumanawathie
No. 281A,
Kadawatha Road,
Ganemulla.
8. M.A. Rejanona (**Deceased**)
No. 52,
Kendaliyadda Paluwa,
Ganemulla
9. S. Weerarathna
10. L. Jayasinghe
11. K.A. Jayasinghe
12. J.A.D.J.A. Ranasinghe
13. P.A.A. Ranasinghe
14. K.A. Jayasinghe

All of,
No. 52/1,
Kendaliyadda Paluwa,
Ganemulla

15. Pathma Ranasinghe,
No. 281/A,
Kadawatha Road,
Ganemulla.

DEFENDANT-RESPONDENT-
RESPONDENTS

BEFORE : **P. PADMAN SURASENA, CJ**
KUMUDINI WICKREMASINGHE, J
JANAK DE SILVA, J

COUNSEL : W. Dayaratne, PC with Ms. Ranjika Jayawardena for the 1st to 4th and 7a Defendant-Respondent-Appellants instructed by Ms. C. Dayaratne

Hemasiri Withanachchi for Plaintiff-Appellant-Respondents.

ARGUED ON : 31-10-2025
DECIDED ON : 05-02-2026

P. PADMAN SURASENA, CJ.

The two Plaintiffs in this case (husband and wife), filing the Plaintiff, prayed for an order to partition the land described in the Schedule to the Plaintiff. According to the said Schedule, the corpus to be partitioned, is described as a land in extent of about 1 Acre, 2 Roods. The Schedule has described its boundaries as follows:

- To the North - Cart road
- To the East - the boundary of the paddy field of Welivita Angoda Liyanage De Yonis Appuhamy
- To the South - the boundary of the land of Don Gregory Siriwardena
- To the West - the boundary of the land of Ampe Mohottige Thegis Appu

The Schedule also states that it is the land registered in folio C83/191 at the Gampaha land registry.

According to the Plaintiff, there are two owners to the corpus which is named "Alubogahawatte kotasa". These two owners and the portions they owned are described in the Plaintiff as follows:

1. Undivided 5/6th portion of the corpus was owned by Welivita Angoda Liyanage Nikulas Appuhami (Nikulas Appuhami)
2. Undivided 1/6th portion of the corpus was owned by Amerasinghe Lekamlage Engohamy.

According to the Plaintiff, said Nikulas Appuhami by the Deed of Transfer No. 10196 attested on 06-03-1931 by D.J. Senaratna Notary Public had transferred this undivided 5/6th portion to Lewis Silva. Thereafter, said Lewis Silva, by the Deed of Transfer No. 4288 attested on 27-02-1931, attested by M.E.P. Samarasinghe Notary Public, had transferred the said undivided 5/6th portion to Pieris Appu. Thereafter, said Pieris Appu, by the Deed of Transfer bearing No. 3012 attested on 30-07-1944 by A.T. Basnayake Notary Public, had transferred the said undivided 5/6th portion of the corpus to Robo Singho. It is thereafter that said Robo Singho by Deed of Gift bearing No. 12198 attested on 29-06-1969 by D.I. Wimalaweera Notary Public, had gifted the said undivided 5/6th portion of the corpus to the 1st and 2nd Plaintiffs.

The Plaintiffs in the Plaintiff itself have averred that the balance 1/6th portion of the corpus had been transferred by the original owner Engohamy to one Jinadasa Siriwardena but the said Deed of Transfer cannot be found.

It is the position of the Plaintiffs according to the Plaintiff, that upon the demise of said Jinadasa Siriwardena the undivided 1/6th portion of the corpus had devolved on 1st to 4th Defendants who were held to be the heirs of Jinadasa Siriwardena in the Gampaha DC testamentary case No. 1664/T.

It is on the above basis that the Plaintiffs in their Plaintiff had prayed for the partition of the corpus in the following manner:

- (i) 5/6th portion of the corpus to be given to the 1st and 2nd Plaintiffs.
- (ii) 1/6th portion of the corpus to be given to the 1st and 4th Defendants.

The 1st to 4th Defendants, in their Statement of Claim, have prayed for the dismissal of the action of the Plaintiff while also praying to exclude Lot No. 3 in the Plan No. 1054 from the corpus.

Upon a commission being issued, W.B.L. Fernando Licensed Surveyor has prepared a Preliminary Plan. This is the Plan No. 306 dated 05-09-1989. While there are three lots depicted in this plan. Lot 2 depicts a foot path placed diagonally across Lot 1. Therefore, in Plan No. 306 there are only two main Lots which can be identified as Lot 1 and Lot 3.

During the survey, some persons had submitted a letter to the Court Commissioner stating that Lot 1 in this Plan is a part of the corpus in a previous partition action bearing Gampaha DC Case No. 21754/P. They had objected the inclusion of Lot 1 in the corpus on that basis. The Court Commissioner gave them notice under Section 16(3) of the Partition Law and accordingly they were added as the 7th to 11th Defendants in the case. However, the 7th to 11th Defendants have neither filed a Statement of Claim nor participated in the trial.

The Plan No. 5788 dated 12-01-1979 prepared BY M.D.J.V. Perera, Licensed Surveyor in the Gampaha DC Case No. 21754/P was produced in the trial marked 181.

In the course of the proceedings, the Plaintiffs had taken another commission subsequent to which J.M.D.T. Patrick Reginald, Licensed Surveyor has prepared the second Preliminary Plan No. 6398 dated 26-04-1988. This plan (Plan No. 6398) shows only the two main lots as Lot 1 and Lot 2. The Plan No. 6398 shows that the middle separating line between Lot 1 and Lot 2 is uncertain. This plan was marked X in the trial. The Plaintiff in her evidence has admitted that Lot 1 in Plan No. 6398 is the same as Lot 1 in the Plan No. 5788 dated 12-01-1979 which is the Plan prepared for Gampaha DC Case No. 21754/P (previous Partition Action). The Plaintiff has further admitted that the said Lot 1 was allotted to her father Heras Singho in the said Gampaha DC case No. 21754/P. She has also stated that her father Heras Singho had thereafter subsequently transferred said Lot 1 to the 2nd Plaintiff.

Although the 2nd Plaintiff also had given evidence in the trial, he had passed away before the conclusion of his evidence. Thereafter, the sister of the 1st Plaintiff had given evidence and the case for the Plaintiffs was closed, marking the first Preliminary Plan No. 306 as Y, and the second Preliminary Plan No. 6398 as X.

At the end of the trial, the learned District Judge by his Judgment dated 11-12-2009, for the reasons set out therein had dismissed the action of the Plaintiffs on the basis that the Plaintiffs had failed to prove their title to the corpus.

Being aggrieved by the Judgment dated 11-12-2009 pronounced by the District Judge of Gampaha, the Plaintiffs appealed to the Civil Appeals High Court.

The Civil Appeals High Court by its Judgment dated 15-12-2014 for the reasons set out therein, has decided to allow the appeal and ordered the partition of the corpus.

The Civil Appeals High Court, in its Judgment, has held that the corpus as a whole as per the Preliminary Plan must be partitioned as claimed by the Plaintiffs in their Plaintiff.

The Civil Appeals High Court, in its Judgment, has also made a conclusion that an extent of 48.8 perches must be allotted to the 1st to 4th Defendants.

At the outset, I observe that the Civil Appeals High Court has failed to give any acceptable and clear reason for its decision. It is not clear as to the basis on which the Civil Appeals High Court has decided to allot 48.8 perches to the 1st to 4th Defendants. At one point it has stated as follows:

“ලොට 2 දරන කොටසේ විත්තිකරුවන්ට හිමි විය යුතු සම්පර්ණ බිම ප්‍රමාණය පර්වස් 48.8 බැවින් එය 1 සිට 4 දක්වා සියලු විත්තිකරුවන්ට ඔවුන්ගේ හිමිකම මත ලබාදීමට තීන්දු කරමු.

විත්තිකාර පාර්ශවයට පර්වස් 48.8 කාලාවරෝධය මත හිමි විය යුතු බැවින් එම කොටස අතහැර, කැබලී අංක 2 න් ඉතිරි වන්නා ඩු බිම් කොටස පර්වස් එකසිය 113.7 ලොට අංක 2 න් පැමිණිලිකාර පාර්ශවයට හිමි විය යුතු බවට තීන්දු කරමු. ඒ අනුව පැමිණිලිකරුවන්ට ලොට අංක 1න් පර්වස් 130.3 ක් ද, ලොට අංක 2න් පර්වස් එකසිය 113.7 ක් ලෙසට ද, හිමි විය යුතු මූල පර්වස් සංඛ්‍යාව පර්වස් 244ක් බවට අප තීරණය කරමු”

Upon the Leave to Appeal Application being supported, this Court by its Order dated 11-08-2017 has decided to grant Leave to Appeal on the questions of law set out in paragraph 22(d), 22(e), and 22(f) of the Petition of Appeal dated 24-01-2015. These questions of law are as follows:

- d) *Did their Lordships also come to an erroneous conclusion that the Learned District Judge erred in law when he rejected the pedigree of the Plaintiffs on the ground that the original owner namely one Nicholas Appuhamy's title has not been proved whereas the Learned District Judge has clearly considered the deeds of both parties and found both deeds are pertaining to the corpus and therefore Nicholas's undivided 5/6th share or Engohamy's 1/6th share has not been clearly established to prove the pedigree of the Plaintiffs?*
- e) *Did their Lordships seriously misdirect themselves when they held that the Plaintiff/Respondents are entitled to undivided 5/6th share from Lot 2 of Plan marked 'X' and the Defendants are entitled to 48.8 perches by way of prescription when it is settled law that prescriptive title could be acquired only for a divided portion and when the Plaintiffs are given undivided rights from Lot 2 it becomes undivided and therefore their finding that the Defendants are entitled to 48.8 perches by prescription is totally erroneous?*
- f) *Have their Lordships come to an erroneous conclusion that the Defendants have not prescribed to entire Lot 2 of Plan marked 'X' when admittedly the 1st Plaintiff said that Reja Nona was in possession for well over 50 years and in the Plan No. 5788 marked 181 the eastern boundary is the defendants' land marked lot 2 in Plan marked 'X' which was proved by the Defendants by taking a commission and submitting the Plan No. 1054 where it is clearly stated that Lot 3 in that Plan is Lot 2 in Plan marked X' and also all the improvements and plantation were possessed by the Defendants?*

I observe that the learned Counsel who appeared for the Plaintiffs in the trial on 07-11-2003 had informed the learned District Judge as follows:¹

¹ Found at page 140 of the Brief

"මෙ අවස්ථාවේදී පැමිණිල්ල වෙනුවෙන් නීතිඥ ලයනල් සේනානායක මහතා අධිකරණයට කරුණු සැලකර සිටි.

මෙ අවස්ථාවේදී මා විසින් සඳහන් කර සිටින්නේ, මෙ නඩුවේ විෂය වස්තුව අංක 6398 දරණ (X) පිහුරේ අංක 2 දරණ කැබැල්ලට සීමා කරන බවය. එයින් මෙ නඩුවේ පැමිණිල්ල විසින් ඉල්ලා සිටිනු ලබන්නේ අංක 2 දරණ කැබැල්ල බෙදා දෙන ලෙසය. එසේ අංක 1 කැබැල්ල විෂය වස්තුවට අයත් තොවන බව මා මෙ අවස්ථාවේදී කියා සිටින්නේ දැනට එම අංක 21754/බඳුම නඩුවේ විෂය වස්තුවට ඇතුළත් වී තිබෙන නියයි. එම බඳුම නඩුවේ අතරු තීන්දු ප්‍රකාශයක් ඇතුළත් කර ඇත. මෙ කාරණය තරහ කරන විත්ති කරුවන් විසින්ද ඔවුන්ගේ හිමිකම ප්‍රකාශයේ පිළිගෙන තිබේ. එයින් අද නඩුවේ විෂය වස්තුව ඉහත කි අංක 6398 දරණ පිහුරේ අංක 2 දරණ කැබැල්ලට පමණක් සීමා කරන බව ගෞරවයෙන් දන්වා සිටිමි.

Thus, it is clear that the Plaintiffs in the course of the trial had confined the corpus to be partitioned, only to Lot 2 of Plan No. 6398.

Therefore, clearly, the Civil Appeals High Court was in error when it decided to partition the corpus containing Lot 1 and Lot 2 of Plan No. 6398, when the Plaintiffs themselves had specifically informed the learned District Judge that they would restrict their case only to Lot 2 of Plan No. 6398. Thus, it was the informed basis of the Plaintiffs that only Lot 2 of Plan No. 6398 which must be taken as the corpus to be partitioned. On that ground alone, the Judgment of the Civil Appeal High Court cannot be allowed to stand.

The learned District Judge had proceeded to consider the case on the basis that the corpus as per the Plaintiff consisted of Lot 1 and Lot 2 in Plan No. 6398. This is the plan marked in the trial as X. It is the second Preliminary Plan.

The first Preliminary Plan bearing No. 306 was marked in the trial as Y. It is the assertion of the Plaintiff that the said first Preliminary Plan No. 306 is not correct. Therefore, it is justifiable for the learned District Judge to proceed on the basis that the Preliminary Plan prepared in the case is Plan No. 6398, which is the second Preliminary Plan.

Having regard to the plan prepared in Gampaha DC Case No. 21754/P (i.e. Plan No. 5788) dated 12-01-1980, and also having taken into consideration, the submission made by the learned Counsel for the Plaintiffs that the Plaintiffs would limit the corpus of the action only to Lot 2 of Plan No. 6398, dated 26-04-1998, the learned District Judge in his Judgment has

rightly decided that the corpus of the action should be only Lot 2 in Plan No. 6398 dated 26-04-1998.

I observe that the Plaintiffs had deliberately suppressed the fact that Lot 1 is a land which had already been partitioned in the previous partition action, Gampaha DC case No. 21754/P. The case that the Plaintiffs had presented to the learned District Judge before the District Court is that undivided 5/6th portion of Lot 1 and 2 of Plan No. 6398 must be allotted to them. However, subsequent change of corpus limiting it only to Lot 2 of Plan No. 6398 would definitely run counter to their claim and proof that they are the owners of 5/6th portion of Lot 1 and Lot 2 of Plan No. 6398.

The learned District Judge having examined the deeds, evidence produced in the trial, had rightly concluded that the Plaintiffs had failed to prove that they are the owners of 5/6th portion of the corpus. I have no reason/ basis to deviate from that conclusion. On the other hand, as has been stated before, the learned Judges of the Civil Appeals High Court have erred in their Judgment. I have already adverted to the reasons for the same.

In the above circumstances, I answer the questions of law in respect of which the Court has granted Leave to Appeal, in the following way:

Answer to the first question of law (i.e. Para 22(d)):

The Civil Appeals High Court has come to an erroneous conclusion that the learned District Judge had erred in law when he held that the Plaintiffs had failed to prove their title.

Answer to the second question of law (i.e. Para 22(e)):

The Civil Appeals High Court has misdirected itself when it held to partition the land in the way it had stated in its Judgment dated 15-12-2014

Answer to the third question of law (i.e. Para 22(f)):

The Civil Appeals High Court has come to an erroneous conclusion that the 1st to 4th Defendants have prescribed to a land.

Accordingly, I allow the appeal and affirm the Judgment dated 11-12-2009 of the learned District Judge of Gampaha. I set aside the Judgment dated 15-12-2014 pronounced by the Civil Appellate High Court.

CHIEF JUSTICE

KUMUDINI WICKREMASINGHE, J

I agree,

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J

I agree,

JUDGE OF THE SUPREME COURT