

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

In the matter of an application for
Appeal in terms of Section 5(c)
of the High Court of the Provinces
(Special Provisions) Amendment
Act No. 54 of 2006.

1. Samaranayake Rajapaksha
Mudalige Thilaka Chandralatha
Samaranayake,
Thalapitiya, Panawela,
Eheliyagoda.

2. Samaranayake Rajapaksha
Mudalige Vanitha Tulin
Samaranayake,
No.199, Malagala, Padukka.

Plaintiffs

SC Appeal No. 03/2016
SC HC (CA) LA No. 80/2015
WP/HCCA/AV/818/2008(F)
D.C. Pugoda Case No.480/P

V.

Samaranayake Rajapaksha
Mudalige Oliver Ranjith
Samaranayake,
No. 926/6, Kotte Road, Ethul Kotte,
Kotte.

Defendant

AND BETWEEN

Samaranayake Rajapaksha
Mudalige Oliver Ranjith
Samaranayake,
No. 926/6, Kotte Road, Ethul Kotte,
Kotte.

Defendant-Appellant

V.

1. Samaranayake Rajapaksha
Mudalige Thilaka Chandralatha
Samaranayake,
Thalapitiya, Panawela,
Eheliyagoda.
2. Samaranayake Rajapaksha
Mudalige Vanitha Tulin
Samaranayake,
No.199, Malagala, Padukka.

Plaintiffs-Respondents

AND NOW BETWEEN

1. Samaranayake Rajapaksha
Mudalige Thilaka Chandralatha
Samaranayake,
Thalapitiya, Panawela,
Eheliyagoda.

2. Samaranayake Rajapaksha
Mudalige Vanitha Tulin
Samaranayake,
No.199, Malagala, Padukka.

Plaintiffs-Respondents-Appellants

V.

Samaranayake Rajapaksha
Mudalige Oliver Ranjith
Samaranayake,
No. 926/6, Kotte Road, Ethul Kotte,
Kotte.

Defendant-Appellant-Respondent

Before : **MAHINDA SAMAYAWARDHENA, J.**
 K. PRIYANTHA FERNANDO, J.
 M. SAMPATH K. B. WIJERATNE, J.

Counsel : Chathura Galhena with Naduni Hemantha instructed
by Manoja Gunawardena for the Plaintiffs-
Respondents-Appellants.

Rohan Sahabandu, PC with Chathurika Elvitigala and
S. Senanayake instructed by Amila Kiripitigala for the
Defendant-Appellant-Respondent.

Argued on : 29.09.2025

Decided on : 04.11.2025

K. PRIYANTHA FERNANDO, J

1. This is an appeal from the judgment of the High Court of Civil Appeal, *Avissawella* dated 23.01.2015 that held in favour of the Defendant-Appellant-Respondent (hereinafter referred to as Defendant). The 1st and 2nd Plaintiffs-Respondents-Appellants (hereinafter referred to as Plaintiffs) preferred this appeal from the judgment of the High Court that decided on the basis that the corpus of the subject matter has not been properly identified.

Facts in Brief

2. The land in issue is described in the schedule to the amended Plaint dated 22.12.1998. The Plaintiffs instituted action to partition the said land between the Plaintiffs and the Defendant.
3. According to the amended Plaint, the Plaintiffs state that each of them are entitled to 1/6 share of the said land and that the Defendant is entitled to 4/6.
4. The Defendant, in the Statement of Claim, has stated that the land in question has not been identified properly as there is a vast difference in the extent of the land described in the amended Plaint and the Preliminary Plan submitted by the Licenced Surveyor J. M. D. T. Patrick Reginold, which is dated 13.12.2000 and is marked as "X".
5. The learned District Judge, delivering her judgment dated 26.03.2008 held in favour of the Plaintiff and ordered the land to be partitioned as prayed for in the amended Plaint.
6. Being aggrieved by the decision of the learned District Judge, the Defendant preferred an appeal to the Civil Appellate High Court of *Avissawella*.

7. Upon hearing of the Appeal, the Learned Judges of the High Court delivered the judgment on 23.01.2015 allowing the Appeal and setting aside the judgment of the District Court.
8. Being aggrieved by the decision of the High Court, the Plaintiffs preferred the instant appeal to this Court. Leave to appeal was granted on the questions of law set out in paragraphs 17 (iii) and 17 (iv) of the Petition dated 04.03.2015.

Questions of Law

9. Paragraph 17;

“(iii) Did the Civil Appellate High Court err in dismissing the action due to the disparity or variation in the extent in the corpus morefully described in the schedule to the plaint and the corpus depicted in the preliminary plan?”

“(iv) Did the Civil Appellate High Court fail to follow the decisions of the Superior Courts in an instant of the disparity or variation in the extent of the corpus and dismiss the action?”

Analysis of the Questions of Law

10. **Section 18(1)(a)(iii) of the Partition Law No. 21 of 1977** states that;

*(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) ...

[Emphasis mine]

11. In the case of **Sopaya Silva and Another v. Magilin Silva [1989 02 Sri LR 105] at 108** it was stated by S.N. Silva, J. that;

“... If the land surveyed is substantially different from the land as described in the schedule to the plaint, the Court has to decide at that stage whether to issue instructions to the surveyor to carry out a fresh survey in conformity with the commission or whether the action should be proceeded with in respect of the land as surveyed.”

12. The identification of the corpus is vital to a partition action and as stated by Samayawardhena, J. in **Thiththalapitige Ruban Perera v. Thiththalapitige Tilakaratne and Another (SC/APPEAL/125/2016 S.C. Minutes of 21 May 2021)**;

“...In a partition action, if the corpus cannot be identified, ipso facto, the action shall fail. There is no necessity to investigate title until the corpus is properly identified. The decision that the corpus has not been properly identified decides the fate of the action

*without further ado. This underscores the great care with which this decision shall be taken by Court. **It shall not be used as a convenient method to summarily dispose of long-drawn-out and complicated partition actions** without embarking on the arduous task of investigating the title of each party.”*

[Emphasis mine]

In that case the discrepancy in the extent was considered not to be a ground for the dismissal of the partition action as the Surveyor’s Report depicts satisfactory findings and as the Deeds through which rights are claimed are consistent with the Plaintiff.

13. In light of the above, I will take into account the following facts and arguments in relation to the discrepancy of the extent of the land in question.

14. The Schedule to the amended Plaintiff marked “A” describes the land as follows;

“බස්නාහිර පළාතේ ගම්පහ දිස්ත්‍රික්කයේ සියනැ කෝරළයේ ගහබඩ පත්තුවේ සමඟැද්දේ තිබෙන හල්වලවත්ත සහ කලභුගහවත්ත ට මායිම්: උතුරට හල්වල සහ මන්ඩාවිල කුඹුර ද, නැගෙනහිරට දොන් ජුසේ ජයතිලක නොතාරිස් මහත්මයාගේ ඉඩම සහ කැකුළුපාය ද, දකුණට ජී. ඒ. පාටුළු අප්පුහාමිට සහ තව අයට අයිති ඉඩම ද, බස්නාහිරට රාජපක්ෂ ලියනගේ ජේම්ස් පෙරේරා සහ තව අයට අයිති ඉඩම ද, යන මෙහි තුළ අක්කර විස්සක් පමණ විශාල...”

15. The Deeds marked “P2” and “P3” dated 07.04.1944 through which the Plaintiffs and the Defendant derived title also describe the land in the same manner.

16. On the other hand, the Preliminary Plan marked “X” prepared by Licenced Surveyor J. M. D. T. Patrick Reginold and dated 13.12.2000, describes the land as follows;

- උතුර - ගම්මුත්ට අයිති කුඹුර, ඇල, හල්වල සහ කැකුළුපාය කුඹුර

- නැගෙනහිර - හල්වල, කැකුල්පාය කුඹුර සහ ප්‍රැන්සිස් සාලෙස් සහ තවත් අයට අයිති ඉඩම
- දකුණ - ශ්‍රේස් ජයතිලක, පුවන් ජයතිලක සහ මයිකල් ජයතිලක යන අයට අයිති ඉඩම්, පාර, නිමල් කළුබෝවිලට අයිති ඉඩම සහ එස්. ජී. ඒ. ඒ. සෙනෙවිරත්නට අයිති ඉඩම
- බස්නාහිර - විමලසේන රාජපක්ෂට අයිති ඉඩම, පී. ඒ. පොඩ්මැණිකේට සහ තවත් අයට අයිති ඉඩම සහ ගම්මුන්ට අයිති කුඹුර.
- The extent has been stated as 14 Acres and 14 Perches.

17. The Surveyor's Report, dated 13.12.2000, submitted as per **Section 18(1)(a)(iii) of the Partition Law No. 21 of 1977**, can be found on page 336 of the Appeal Brief. As per paragraph 5 of the said Report it is evident that the Surveyor is satisfied that the surveyed land is the same land that has been described in the schedule to the amended Plaint. The Report reads as follows:

“මනින ලද ඉඩම පැමිණිල්ලේ උපලේඛනයේ සඳහන් ඉඩම් වේ”

Further, the Report also states that all parties were present during the surveying of the land.

18. It is the Defendant's current position, by way of written submissions, that the reason for the discrepancy in extent is because the Schedule to the Amended Plaint depicts an amalgamation of two lands named “හල්වලවත්ත” and “කලභුගහවත්ත”. However, the Defendant has admitted at the Trial stage that the land in question was in fact 20 Acres in extent. Further, the Defendant has not marked any Deed or Plan at the Trial stage to establish this contention.

19. It is further evident through the first Plaintiff's evidence during cross-examination at the Trial stage that “හල්වලවත්ත” and “කලභුගහවත්ත” both refer to the land named “හල්වලවත්ත” and that “හල්වලවත්ත” was the more commonly used name.

20. Therefore, taking the above into consideration, I am of the view that the mere discrepancy in the extent of the land in the Schedule to the amended Plaint and the Preliminary Plan should not warrant a dismissal of the Partition action.

21. I will now take into consideration the submissions by the parties on the variations of the boundaries of the said land.

22. When perusing the evidence recorded in the District Court of *Pugoda*, it is clear that the Licenced Surveyor J. M. D. T. Patrick Reginold has admitted that that the land he surveyed is the same land that was surveyed by him as the boundaries were the same. I will reproduce the relevant excerpts for clarity:

“ප්‍ර: තමා සැහිමකට පත් වෙනවාද පැමිණිල්ලේ උපලේඛනයේ තිබෙන උතුරු මායිමක් තමා මැනූන උතුරු මයිමක් හරිය කියා?

උ: ඔව්”

(*Vide* page 133-4 of the Appeal Brief)

“ප්‍ර: දකුණු මායිම පැහැදිලිව තිබුණාද?

උ: තිබුණා”

(*Vide* page 136 of the Appeal Brief)

“ප්‍ර: බස්නාහිර මායිම තිබෙනවා කියලා සැහිමකට පත්වුණාද?

උ: ඔව්”

(*Vide* page 138 of the Appeal Brief)

It is evident that the Licenced Surveyor J. M. D. T. Patrick Reginold was able to identify 3 out of the 4 boundaries of the land in question.

23. While there are slight differences in the names of the boundaries, I will draw attention to the following excerpt by Samayawardhena, J. in the judgment of ***Thiththalapitige Ruban Perera v. Thiththalapitige Tilakaratne and Another (supra)***:

“...the Surveyor went to the land 76 years after the execution of the earliest known Deed. One cannot expect the boundaries of land in Gampaha to remain unchanged for 76 years. ... In the Preliminary Plan, the Surveyor records the existing boundaries. In doing so, he gives the names of the present owners.”

24. Similarly, in the instant case too, the Surveyor’s Preliminary Plan is made in the year 2000 while the Deeds marked “P2” and “P3” are dated 07.04.1944. Thus, realistically one cannot expect the boundaries of a land and their owners to remain unchanged for a period of approximately 56 years.

25. Therefore, I answer the first question of law in the affirmative that the Civil Appellate High Court has erred in dismissing the action due to the disparity or variation in the extent in the corpus morefully described in the schedule to the plaint and the corpus depicted in the Preliminary Plan.

26. In relation to the second question of law, the learned President’s Counsel for the Defendant, in his written submissions, has referred to several judgments of this Court throughout several years which have dealt with issues regarding discrepancies in the extent of a land. However, these case laws are distinguishable from the case at hand on both legal and factual premises.

27. Therefore, taking the above into account, I affirm that the corpus has sufficiently been identified. The learned District Judge has correctly addressed all aspects in detail having regard to the evidence before the Court. The two questions of law are answered in the affirmative.

28. Hence, I set aside the judgment of the Civil Appellate High Court of *Avissawella* dated 23.01.2015 and uphold the judgment of the District Court of *Pugoda* dated 26.03.2008.

Appeal is allowed

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE M. SAMPATH K.B. WIJERATNE

I agree

JUDGE OF THE SUPREME COURT