

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

SC/Appeal/51/2020

Wadumestriga Nimal,  
No. 43, Modara Patuwatha,  
Dodandugoda.

SC/HCCA/LA/413/2019

**SUBSTITUTED PLAINTIFF**

WP/HCCA/GA/74/2013(F)

D. C. Galle Case No. 12942/P

**Vs.**

01. Wadumestriga Wilson,
02. Wadumestriga Banet,
03. Wadumestriga Loranona,
04. Wadige Dani,
05. Wadige Jasinona,
06. Wadige Sami,
- 06A. Wadige Dani,
07. Wadige Nelinona,
08. Wadige Piyathunga,
09. Wadige Dayaseeli,
10. Wadige Dayawathi,

11. Gonapinuwala Withanage  
Paulis,
12. Gonapinuwala Withanage  
Leelasena,
13. Gonapinuwala Withanage  
Nandana,
14. Kaluappuwa Hannadige  
Upali Indrajith,
15. Kaluappuwa Hannadige  
Nalini Chandralatha,
16. Kaluappuwa Hannadige  
Sunil Pushpakumara,
17. Kaluappuwa Hannadige  
Jinadasa,
18. Kalupahanage Chandrani  
de Silva,
19. Kalupahanage Priyantha,
20. Kalupahanage Malani,
21. Kalupahanage Pathmini,  
  
Modara Patuwatha,  
Dodandugoda, Dodanduwa.

**DEFENDANTS**

**AND**

Wadumestriga Nimal,  
No. 43, Modara Patuwatha,  
Dodandugoda.

**SUBSTITUED PLAINTIFF –  
APPELLANT**

**Vs.**

01. Wadumestriga Wilson,
02. Wadumestriga Banet,
- 02A. Wadumestriga Somarsiri of  
Dodandugoda, Dodanduwa.
03. Wadumestriga Loranona,
- 03A. Petta Yaddahige Donald of  
Dodandugoda, Dodanduwa.
04. Wadige Dani, (Deceased)
05. Wadige Jasinona,
06. Wadige Sami,
- 06A. Wadige Dani,

07. Wadige Nelinona,
08. Wadige Piyathunga,
09. Wadige Dayaseeli,
10. Wadige Dayawathi,
11. Gonapinuwala Withanage  
Paulis,
12. Gonapinuwala Withanage  
Leelasena, (Deceased)
- 12A. Lebunu Hewage Kumudu  
Ramyalatha of Dodandugoda,  
Dodanduwa.
13. Gonapinuwala Withanage  
Nandana,
14. Kaluappuwa Hannadige  
Upali Indrajith,
15. Kaluappuwa Hannadige  
Nalini Chandralatha,
16. Kaluappuwa Hannadige  
Sunil Pushpakumara,
17. Kaluappuwa Hannadige  
Jinadasa,
18. Kalupahanage Chandrani de

Silva,

19. Kalupahanage Priyantha,

20. Kalupahanage Malani,

21. Kalupahanage Pathmini,

Modara Patuwatha,

Dodandugoda, Dodanduwa.

**DEFENDANT – RESPONDENTS**

**AND NOW BETWEEN**

Wadumestriga Nimal,

No. 43, Modara Patuwatha,

Dodandugoda

**SUBSTITUTED PLAINTIFF –  
APPELLANT – APPELLANT**

**Vs.**

01. Wadumestriga Wilson,

02. Wadumestriga Banet,

02A. Wadumestriga Somarsiri of  
Dodandugoda, Dodanduwa

03A. Petta Yaddahige Donald of  
Dodandugoda, Dodanduwa

- 04. Wadige Dani, (Deceased)
- 05. Wadige Jasinona,
- 06. Wadige Sami,
- 06A. Wadige Dani,
- 07. Wadige Nelinona,
- 08. Wadige Piyathunga,
- 09. Wadige Dayaseeli,
- 10. Wadige Dayawathi,
- 11. Gonapinuwala Withanage  
Paulis, (deceased)
- 11A. Baddegama Liyanage  
Lilinona
- 11B. Gonapinuwala Withanage  
Upul Nishantha
- 11C. Gonapinuwala Withanage  
Suranga Darshana
- 11.D Gonapinuwala Withanage  
Shriyalatha Damayanthi
- 12. Gonapinuwala Withanage  
Leelasena, (Deceased)

12A. Lebunu Hewage Kumudu  
Ramyalatha of  
Dodandugoda, Dodanduwa.

13. Gonapinuwala Withanage  
Nandana,

14. Kaluppuwa Hannadige  
Upali Indrajith,

15. Kaluppuwa Hannadige  
Nalini Chandralatha,

16. Kaluppuwa Hannadige  
Sunil Pushpakumara,

17. Kaluppuwa Hannadige  
Jinadasa,

18. Kalupahanage Chandrani de  
Silva of “Sadali Product”  
108A, Pitiwella, Bussa

19. Kalupahanage Priyantha,

20. Kalupahanage Malani,

21. Kaluppuwa Pathmini,

Modara Patuwatha,  
Dodandugoda, Dodanduwa.

**DEFENDANT – RESPONDENT –**  
**RESPONDENTS**

**Before** : E.A.G.R. Amarasekara, J.  
Yasantha Kodagoda, PC, J.  
Arjuna Obeysekere, J.

**Counsel** : Nuwan Bopage with M. Jayasena for the Substituted Plaintiff – Appellant  
– Appellant.

Pani Subasinghe with Aruna Jayathilaka for the 11<sup>th</sup> and 13<sup>th</sup> Defendant –  
Respondent – Respondents.

Ershan Ariyaratnam for the 12<sup>th</sup> Defendant – Respondent – Respondent.

**Argued on** : 24.02.2023

**Decided on** : 13.06.2025

**E.A.G.R Amarasekara, J.**

This is an appeal made against the Judgment dated 17.09.2019 of the Civil Appellate High Court of Southern Province holden in Galle in Case No. SP/HCCA/GA/74/2013/(F) which affirmed the Judgment dated 02.07.2013 of the District Court of Galle in Case No. 12942/P.

The aforesaid action in the District Court was a partition action filed by the original Plaintiff, one Wadumesthrige Gilman to obtain a partition decree for the land named ‘Thotewatte’ morefully described in the schedule to the Plaint in accordance with the pedigree shown in the said Plaint dated 05.10.1995. As per the said Plaint, entitlement to the shares in the land have been shown to the Plaintiff and the 1<sup>st</sup> to 10<sup>th</sup> Defendants and the position in the Plaint was that 12<sup>th</sup> Defendant resides in the land with the consent of the parties and the 11<sup>th</sup> Defendant is a licensee of the 3<sup>rd</sup> Defendant who came to the land 3 years prior to the date of the Plaint.

The 1<sup>st</sup> Defendant filed its Statement of Claim dated 06.03.2003 in line with the averments in the Plaint and had stated that 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Defendants are there as licensees and they have no rights in the property.



The 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> Defendants who later intervened in the said partition action have tendered a Statement of Claim dated 12.02.2010, which basically corresponds with the Plaintiff but further expands the devolution of title shown to the 5<sup>th</sup> and 7<sup>th</sup> Defendants in the Plaintiff explaining how the shares shown to them in the Plaintiff devolve on their successors due to the death of those parties. The said Statement of Claim also reveals that Pinhamy referred to in the pedigree of the Plaintiff had another child named Lilinona and how her share should devolve after her demise. Hence, this Statement of Claim by the 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Defendants only suggest some amendments to certain branches of the Plaintiff's pedigree which is not in dispute in this appeal.

The 11<sup>th</sup> Defendant first filed his Statement of Claim dated 15.06.2001 and then filed the amended Statement of Claim dated 30.08.2002. As per the pedigree presented by the amended Statement of Claim by the 11<sup>th</sup> Defendant, the number of original owners and the entitlements of the original owners differ from the that of the pedigree of the Plaintiff. As per the Statement of Claim filed by the 13<sup>th</sup> Defendant dated 23.01.2002, his claim corresponds with the pedigree presented by the 11<sup>th</sup> Defendant but reveals that Gonapeenuwala Withanage Simon mentioned in the pedigree of the 11<sup>th</sup> Defendant had four more children besides 13<sup>th</sup> Defendant.

Thus, the Plaintiff, 1<sup>st</sup> Defendant, and 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> Defendants apparently stood on one stance as to the original ownership of the land sought to be partitioned, and the 11<sup>th</sup> and 13<sup>th</sup> Defendants stood on a different stance as to the same.

The admissions and points of contests relevant to the trial concerned in this appeal had been recorded on 29.01.2007, where the parties had admitted the Corpus sought to be partitioned as Lot 1 in in the Preliminary Plan No.539 made by R. S. Weerasekara, L.S. On that date the Plaintiff had raised points of contest No.1 to 4 while the 4<sup>th</sup> Defendant had raised the point of contest No. 5. On the same date, the 11<sup>th</sup> to 13<sup>th</sup> Defendants had raised their points of contest No. 6 to 13. During the trial, points of contest No. 14, 15 by the 11<sup>th</sup> Defendant (vide proceedings dated 09.09.2008) and No. 16, 17 and 18 by the 14<sup>th</sup> to 21<sup>st</sup> Defendants (vide proceedings dated 29.07.2010) had been raised.

Even though the 1<sup>st</sup> Defendant started giving evidence on behalf of the Plaintiff, it appears his evidence was not concluded as a date was moved by the Plaintiff to add some parties before the conclusion of the cross-examination by the 11<sup>th</sup> Defendant. Thus, later on, the substituted

Plaintiff had given evidence and closed his case reading his documents marked P1 and P2 in support of the pedigree relied on by the Plaintiff and the parties who stood with him. P1 and P2 are two deeds that establish pedigree and title to 2/24 of the extent of the Corpus which is not in dispute in this appeal. The 11<sup>th</sup> Defendant had given evidence in support of the pedigree he stated in his Statement of Claim and closed his case reading in evidence documents marked 11V1 and 11V2. 11V 1 is an Affidavit, dated 05.10.1995, tendered by the original Plaintiff for an application related to an injunction where the 11<sup>th</sup> Defendant's address is mentioned by the Plaintiff similar to his address to indicate that both were residing in the same land, which is an indication of an admission as to the fact that the 11<sup>th</sup> Defendant resides in the subject matter. V2 is the birth certificate of the 11<sup>th</sup> Defendant. P3 and P4, which are a charge sheet and a journal entry of a case respectively, had been marked during the cross examination of the 11<sup>th</sup> Defendant to show that he had a criminal case for stabbing a person as stated by the substituted Plaintiff in his evidence. As per the substituted Plaintiff's evidence, it was this incident that caused the 11<sup>th</sup> Defendant to come to this land and the reason to permit him to stay there in the subject matter. Other than those documents, Preliminary Plan and its report also had been marked in evidence as X and X1. Apart from the aforesaid documents, it was the oral evidence of the substituted Plaintiff and the 11<sup>th</sup> Defendant that was available for the learned Additional District Judge to decide the pedigree for the balance 22/24 share of the Corpus, of which the original ownership was in dispute between the contesting parties.

After the conclusion of the evidence, the learned Additional District Judge held with the original ownership stated by the 11<sup>th</sup> Defendant and decided the pedigree in accordance of that finding. In the appeal made by the Substituted Plaintiff Appellant, even the learned High Court Judges approved the decision of the learned Additional District Judge. When the leave to appeal application was supported on behalf of the substituted Plaintiff-Appellant, this Court has granted leave on the following questions of law.

*“1. Did the learned Judges of the High Court fail to consider the fact that the 11th to 13th Respondents did not prove the pedigree referred to in their statement of claim?”*

Consequential Question of Law raised by the Counsel for the 12A Defendant-Respondent;

*“2. Whether the Petitioner has failed to prove his pedigree in regard 22/24 of shares of the corpus referred to in the plaint?”*

As said before there is no dispute as to the identification of the Corpus and the original ownership of 2/24 of the shares of the Corpus. As per the stance of the Plaintiff, this 2/24 was originally owned by Pinnaduwa Kathohamy, Peththayadhdhehige Appusignho, Mangonona, Miththohamy, Ganhewage Yasohamy, Siligallage Arnolis, Ganhewage Endoris and Wathudura Uderishamy, who were the vendors in Deed No.396 marked P2. Through P2 they have transferred their rights over the land to Arlis Wijesuriya, and the rights of said Arlis Wijesuriya had been devolved upon Justin, Conistance, Regina, Dislin and Agnes by paternal inheritance. All of them had transferred their rights to Wedige Chara Nona by Deed marked P1. With the demise of Chara Nona said 2/24 share had been devolved on the Plaintiff, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in equal portions. The learned Additional District Judge had found that part of the Plaintiff's pedigree as correct, which is also supported by the Deeds marked P1 and P2. The 11<sup>th</sup> to 13<sup>th</sup> Defendants did not appeal against the Judgment of the learned Additional District Judge which is in favour of them. No other party appealed against the said Judgment other than the Substituted Plaintiff-Appellant. However, the said finding of the learned Additional District Judge relating to the said 2/24 of shares of the Corpus was in accordance with the Plaintiff's Pedigree, and the said devolution of title to the 2/24 shares of the Corpus is not in dispute.

What is disputed is the original ownership of the balance 22/24 shares of the Corpus. The Plaintiff and the Defendants who stand together with the same stance had taken up the position that the original owner of the said 22/24 was one Wedige Endorishamy. On the other hand, the 11<sup>th</sup> Defendant's position was that the original ownership of the said 22/24 was with a man in the Wedige lineage and the said person had two children who were the said Endorishamy mentioned in the Plaintiff's pedigree and one Matheshamy and as such, the ownership of each of them was limited to 11/24 shares of the Corpus. Hence, his position was that said 11/24 of the Endorishamy should devolve according to the Plaintiff's pedigree and the balance 11/24 should devolve according to the pedigree shown by him giving rights to the 11<sup>th</sup> to 13<sup>th</sup> Defendants.

The substituted Plaintiff in his evidence-in-chief itself had stated that Wedige Endorishamy had his entitlements to the land but he did not know the extent of that entitlement- vide page 221 of the brief. Same answer had been given during cross examination- vide page 231 of the brief. The substituted Plaintiff had not seen Endorishamy in during his life time -vide page 232

of the brief. As per the evidence given in pages 233 and 234 of the brief, he once had attempted to state that Endorishamy obtained his rights through a deed and again had stated by inheritance from his parents. Again, at page 244 had stated that he does not admit that it was from paternal inheritance but at page 245 states that it was from paternal inheritance the aforesaid Endorishamy obtained his rights to the Corpus. No deed or document showing the Endorishamy's entitlement to the Corpus had been marked before the learned Additional District Judge. The learned Additional District Judge in her Judgement had stated that he spoke of a fiscal auction but no such fiscal conveyance was marked in evidence. It appears that it was the 1<sup>st</sup> Defendant, whose evidence was not concluded, stated so in evidence. However, no such fiscal conveyance had been marked in evidence.

The above clearly show that the evidence led on behalf of the Plaintiff was not sufficient to establish that the said Endorishamy was an original owner for a 22/24 share of the Corpus. In fact, if it was not for the position of the 11<sup>th</sup> Defendant that Endorishamy had 11/24, there is no reliable evidence from the substituted Plaintiff to establish the extent of the original ownership of the said Endorishamy other than a mere statement to say that the said Endorishamy had 22/24 share of the Corpus. However, he has through his evidence had explained how, through inheritance, Endorishamy's entitlement devolve on the Plaintiff and the other Defendants who rely on the Endorishamy's entitlement. It appears that the 11<sup>th</sup> Defendant had not challenged that part of inheritance except the original ownership for 22/24 shares of the Corpus. During his evidence, the substituted Plaintiff has denied that there was a brother named Matheshamy to the aforesaid Endorishamy but his lack of knowledge and consistency shown even with regard to Endorishamy cannot make this denial to be considered as one made with a well-informed knowledge.

The Substituted Plaintiff in his evidence had attempted to indicate that the 12<sup>th</sup> Defendant came to the land 30 years ago as his grandmother brought him into the land. However, it appears what he says is what he came to know and not of his first-hand knowledge- vide page 224 of the brief. Again, he has stated that the 11<sup>th</sup> Defendant came to his aunt's house about 15 years ago after a brawl with someone, and later, she allowed the 11<sup>th</sup> Defendant to stay in the land and he put up a hut for the 11<sup>th</sup> Defendant to stay in the Corpus – vide pages 224, 234, 235 and 246 of the brief. He had further stated that he knew the 11<sup>th</sup> Defendant as one who came to do farming work of theirs and does not know him as a relative- vide page 230 of the brief. Aforesaid P3 and P4 had been marked during the cross examination of the 11<sup>th</sup> Defendant to

establish that there was a stabbing incident where the 11<sup>th</sup> Defendant was the Defendant. All the above stated evidence were placed before the District Court, apparently, to establish that the 11<sup>th</sup> and 12<sup>th</sup> Defendant are licensees who are not related to the Plaintiff. When P3 shows that the 11<sup>th</sup> Defendant had another address, other than the address relating to the land sought to be partitioned, the original Plaintiff in 11V1 Affidavit had mentioned an address similar to the original Plaintiff's address as the address of the 11<sup>th</sup> Defendant, indicating that the 11<sup>th</sup> Defendant also has an address in the land sought to be partitioned. The 11<sup>th</sup> Defendant in his evidence had explained how and why he left the land sought be partitioned many years ago and stayed with his brother, and also the reason for the other address was due to his livelihood being related to fishing in the sea. However, it must be observed that, as said above, what the substituted Plaintiff stated in relation to the 12<sup>th</sup> Defendant coming to stay in the land was not from his personal knowledge, but rather, from things that he came to know from other sources, and what he stated about the 11<sup>th</sup> Defendant in that regard also indicates that he was not the one who gave such permission to stay in the land but his aunt. He only put up a hut for the 11<sup>th</sup> Defendant to stay. The 11<sup>th</sup> Defendant did not admit that the 11<sup>th</sup> to 13<sup>th</sup> Defendants are licensees under someone. He marked V2, his birth certificate, to show that his place of birth is 'Thotewatte', the land sought to be partitioned. This shows that the position of the Plaintiff, that the 12<sup>th</sup> and 11<sup>th</sup> Defendants came to this land as licensees on a later occasion, cannot be true, as those Defendants relationship with the land has a longer history indicating that their mother was residing in the land sought to be partitioned even at the time of the 11<sup>th</sup> Defendant's birth. Further, this birth certificate shows that the name of the mother was Wedige Mai Nona; a person who belongs to the Wedige lineage and was residing on the same property having the same surname as the name of the original owner of the Plaintiff's pedigree. The 11<sup>th</sup> Defendant refers to the Plaintiff as maternal aunt's son- vide page 304 of the brief. The 11<sup>th</sup> Defendant's evidence was that Endorishamy and Matheshamy who owned the said 22/24 share were brothers and Charu Nona, mother of the Plaintiff, and the 1<sup>st</sup> to 3<sup>rd</sup> Defendant was one of the Endorishamy's child, and 11<sup>th</sup>, 12<sup>th</sup> Defendants and father of the 13<sup>th</sup> Defendants, Martin are the children of Mai Nona, wife of Wilson, who was the only child of said Matheshamy. The 11<sup>th</sup> Defendant had also revealed one more child of Mai Nona in his amended Statement of Claim and also in evidence, who is Peter. The above facts indicate, on balance of probability, that the mother of the 11<sup>th</sup> Defendant and the mother of the Plaintiff, Charu Nona, both belonged to the Wedige lineage and were living in the same property and they were relatives. Thus, the attempt of the Substituted Plaintiff to deny the relationship of the 11<sup>th</sup> to 13<sup>th</sup> Defendants during his evidence and to show them as mere licensees is an attempt to hide their

ownership to the property. When the Plaintiff fails in proving that 11<sup>th</sup> and 12<sup>th</sup> Defendants are licensees, his pedigree starting by showing 22/24 shares of the Corpus to Endorishamy cannot explain the presence of the 11<sup>th</sup> and the 12<sup>th</sup> Defendants within the Corpus.

As per the age given while giving evidence, it appears that the 11<sup>th</sup> Defendant is about 13 years older than the Substituted Plaintiff. Thus, the 11<sup>th</sup> Defendant may have a better knowledge of the pedigree of Wedge lineage. He had said that Endorishamy and Matheshamy were brothers and the 22/24 share belonged to them. Further, he had explained how Endorishamy's rights would devolve as shown in the Plaint, and Matheshamy's rights should come to his only child, Mai Nona, his mother. He had also explained how Mai Nona's rights should devolve according to his knowledge. As per his evidence, he was born in the land sought to be partitioned in 1943 and he had left the land after his mother's demise in 1962. After staying with his brother in a different address and doing jobs such as fishing in the sea, he had stated that he returned to the land sought to be partitioned in or around 1968, married in 1973 while living in the ancestral house and putting up a house for his own. He had also explained in his evidence that even after returning to the land sought to be partitioned, how on certain times, he stayed in another address due to his job relating to fishing in the sea. He had further stated that the 12<sup>th</sup> Defendant, Lilasena, lives in the ancestral house. He had categorically denied that he is a licensee under anyone. Even the X1 reports made by the surveyor shows that the 12<sup>th</sup> Defendant had claimed buildings and plantations in the Corpus.

It is observed that even though the 11<sup>th</sup> Defendant had stated in his evidence-in-chief that Endorishamy and Mateshamy had inherited from their father, during the cross examination, he had stated that he does not know who their father was and how those two got title to the land in dispute. This indicates that the 11<sup>th</sup> Defendant does not know the owner prior to Endorishamy and Matheshamy. This may be the reason that he named the original owner in his Statement of Claim as 'a man belonged to the Wedge Lineage (වැදිලි මිනිසෙක්)' on the premise that the father of said Matiashamy and Endorishamy was the original owner. However, in his evidence, the 11<sup>th</sup> Defendant had said that Endorishamy was the elder brother, while Matheshamy was the younger brother, indicating that he has some personal knowledge of that relationship, but at one place, he had stated that he came to know this relationship through an elderly person over 100 years of age, who was dead by the time he was giving evidence. However, I do not see that this evidence can be accepted in terms of Section 32(5) of the Evidence Ordinance as it is not revealed as to how the said person got that special knowledge and as to when that

statement was made. Even if it is considered that it is not proved that Endorishamy and Matheshamy are brothers, the evidence of the 11<sup>th</sup> Defendant is clear that the Matheshamy had 11/24 shares in the Corpus and it devolved upon their mother, Mai Nona, and accordingly, that share must come to the heirs of Mai Nona.

In **Magilin Perera v Abraham Perera** (1986) 2 Sri Lr 208 at 210, it was stated: *“Therefore, in actual practice it is the usual, and in my view sensible, attitude of Courts that it would not be reasonable to expect proof within very high degrees of probability on questions such as those relating to the original ownership of land. Courts by and large countenance infirmities in this regard, if infirmities they be, in an approach which is realistic rather than legalistic, as to do otherwise would be to put the relief given by partition decrees outside the reach of very many persons seeking to end the co-ownership.”*

It must also be noted that the Plaintiff failed to prove the 11<sup>th</sup> and 12<sup>th</sup> Defendants are licensees, and the occupation of the 12<sup>th</sup> Defendant in the Corpus as per the Surveyor’s report is indicative of the rights of the people in the 11<sup>th</sup> Defendant’s pedigree to the land in dispute. As said before, the substituted Plaintiff’s evidence was not satisfactory even to say that Endorishamy had the ownership to 22/24 shares or any lesser portion. It is only the admission by the 11<sup>th</sup> Defendant that he too had 11/24, that makes it possible to consider granting of rights as per the Plaintiff’s pedigree from the original ownership of Endorishamy. It is so admitted on this basis that the said Endorishamy and Matheshamy are brothers. In fact, challenging that relationship on behalf of the substituted Plaintiff, challenges their claim through the original ownership of Endorishamy, as they failed to prove that the said Endorishamy was the owner of said 22/24 share of the land.

It must be noted that all contesting parties who claimed from the said 22/24 share of the Corpus claim through inheritance and no one had tendered a single deed to claim any share from the said 22/24 share of the Corpus. Thus, there is no documentary evidence that refers to the entitlement of that share. Thus, the Court has to decide it based on the oral evidence available along with the other supporting documents to establish the relevant conflicting stances taken by the Parties. The Court has to decide the said entitlement on a balance of probability. The 11<sup>th</sup> Defendant, being the grandson, should have known Mathiashamy as his grandfather and his mother, Mai Nona, as his daughter and V2 birth certificate proves that Mai Nona was his mother. As it is not proved that they are licensees under anyone of the Plaintiff’s pedigree, his

occupation of the Corpus along with the occupation of the 12<sup>th</sup> Defendant who gain rights as per the 11<sup>th</sup> Defendant's pedigree show that they are entitled to the Corpus. There is nothing to doubt the evidence of the 11<sup>th</sup> Defendant, that they are entitled to 11/24 of the shares of the Corpus, as per the pedigree relied upon by them starting from Matheshamy while giving the balance 11/24 to the people who comes under Plaintiff's pedigree where the Plaintiffs failed to prove the extent of share entitlement to their original owner, Endorishamy, through the evidence of the substituted Plaintiff, if not for the admission by the 11<sup>th</sup> Defendant of the entitlement to 11/24 share by Endorishamy. It must be noted that the Plaintiff's pedigree does not explain the presence of the 11<sup>th</sup> and 12<sup>th</sup> Defendants within the Corpus when they failed to prove their stance that they are licensees but the 11<sup>th</sup> Defendant's pedigree shows that it is because they are co-owners.

It appears that the learned Additional District Judge more or less of the grounds discussed above held in favour of the 11<sup>th</sup> Defendant's stance accepting the pedigree of the 11<sup>th</sup> Defendant to the said 22/24 share of the Corpus. The said Additional District Judge, who delivered the Judgment, heard the case and observed the witnesses. I cannot find that the findings of the learned Additional District Judge as perverse. The learned High Court Judges affirmed the said Judgment stating that the learned Additional District Judge had properly evaluated the evidence and the Judgment had been delivered in accordance with the evidence led at the trial. It is also stated by the learned High Court Judges that the learned Additional District Judge had investigated the title of the parties.

The Counsel for the substituted Plaintiff had cited many cases including **Peris v Perera** 1 N L R 362 at 367, **Gooneratne v Bishop of Colombo** 53 N L R 337 and **Mather v Tamotharam Pillai** 6 N L R 246 to indicate that the Court should be satisfied as to the entitlement of the parties before it enters a decree in favour of them. There is no doubt as to the correctness of that view. It is also trite law that, in a partition action, it is the paramount duty of the Court to investigate title. However, the Court cannot go on a voyage of discovery. It has to decide based on the available evidence. Even to call further evidence, there must be an indication that other evidence is available. The learned Additional District Judge, after evaluating the available evidence, had come to the conclusion that the stance taken up by the 11<sup>th</sup> Defendant is the correct stance. This Court does not see that conclusion as an improbable or perverse conclusion as per the evidence led at the trial. The learned High Court Judges affirmed the Judgment of



the learned Additional District Judge. This Court cannot find that the High Court Judges erred in that regard.

Therefore, the Question of Law No.1 referred to above is answered in the Negative and the Question of Law No.2 referred to above is answered in the affirmative.

Hence, this appeal is dismissed with costs.

Appeal dismissed.

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Judge of the Supreme Court

Yasantha Kodagoda, PC, J.

I agree.

.....  
Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

.....  
Judge of the Supreme Court