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

In the matter of an Appeal in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 read with Articles 127 & 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC Appeal No. 17/ 2018

SC/HCCA/LA/53/2015

UVA/HCCA/BDL/03/2012(F)

UVA/HCCA/BDL/LA/09/09

DC Badulla Case No.P/273/03

Mohamed Hussain Mohamed Mubarak
No. 131, Kovil Kade,
Passara.

PLAINTIFF

Vs.

1. Dhawala Pushpa Athukorala

2. Saddatissa Athukorala

3. Rosalin Karnaratne
   All of: No 349/1, Passara Town,
   Passara.

4. Mohamed Hussain Noorul Sauda

5. Mohamed Hussain Ummul Halima

6. Mohamed Hussain Ummul Lathifa
   All of: No.24/3, Parakrama Mawatha,
   Passara.

7. Mohamed Hussain Ummul Naseela
   No.370, Main Street,
   Passara.

8. Mohamed Hussain Mohamed Amanulla

9. Mohamed Hussain Ummul Hidaya

10. Mohamed Hussain Mohamed Fuad

11. Mohamed Hussain Sithty Fathima

12. Mohamed Hussain Mohamed Faus
    All of: No.24/3, Parakrama Mawatha,
    Passara.

13. Mohamed Ansar
    No.364, Main Street,
    Passara.

14. S.A. Abdul Kafar
    No.366, Main Street,
    Passara.

15. Amarasinghe
    No.368, Main Street,
    Passara.

16. E. V. Karthigesu
    No. 378, Main Street,
    Passara.

DEFENDANTS

AND BETWEEN

Saddatissa Athukorala
No 349/1, Passara Town,
Passara.

2ND DEFENDANT- PETITIONER

Vs.

Mohamed Hussain Mohamed Mubarak
No. 131, Kovilkade,
Passara.

PLAINTIFF- RESPONDENT

1. Dhawala Pushpa Athukorala

3. Rosalin Karnaratne (deceased)
   All of: No 349/1, Passara Town,
   Passara.

4. Mohamed Hussain Noorul Sauda

5. Mohamed Hussain Ummul Halima

6. Mohamed Hussain Ummul Lathifa
   All of: No.24/3, Parakrama Mawatha,
   Passara.

7. Mohamed Hussain Ummul Naseela
   No.370, Main Street,
   Passara.

8. Mohamed Hussain Mohamed Amanulla

9. Mohamed Hussain Ummul Hidaya

10. Mohamed Hussain Mohamed Fuad

11. Mohamed Hussain Sithty Fathima

12. Mohamed Hussain Mohamed Faus
    All of: No.24/3, Parakrama Mawatha,
    Passara.

13. Mohamed Ansar
No.364, Main Street,
Passara.

14. S.A. Abdul Kafar
No.366, Main Street,
Passara.

15. Amarasinghe
No.368, Main Street,
Passara.

16. E. V. Karthigesu (deceased)

16a.E. V. K. Nagendram Sathkunarajah

17. Rajeswari Nagendram
Both of: No.305, Main Street,
Passara.

DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

Saddatissa Athukorala
No 349/1, Passara Town,
Passara.

2ND DEFENDANT-PETITIONER-APPELLANT

Vs.

Mohamed Hussain Mohamed Mubarak
(Deceased)
No. 131, Kovilkade,
Passara.

PLAINTIFF- RESPONDENT-RESPONDENT

Mohamed Hussain Dissanayake
Mudiyanselage Sumithra Mubarak
No.131, Kovilkade,
Passara

SUBSTITUTED PLAINTIFF-RESPONDENT-RESPONDENT

1. Dhawala Pushpa Athukorala

3. Rosalin Karnaratne (deceased)
   All of: No 349/1, Passara Town,
   Passara.

4. Mohamed Hussain Noorul Sauda

5. Mohamed Hussain Ummul Halima

6. Mohamed Hussain Ummul Lathifa
   All of: No.24/3, Parakrama Mawatha,
   Passara.

7. Mohamed Hussain Ummul Naseela
   No.370, Main Street,
   Passara.

8. Mohamed Hussain Mohamed Amanulla

9. Mohamed Hussain Ummul Hidaya

10. Mohamed Hussain Mohamed Fuad

11. Mohamed Hussain Sithty Fathima

12. Mohamed Hussain Mohamed Faus
All of: No.24/3, Parakrama Mawatha,
Passara.

13. Mohamed Ansar
No.364, Main Street,
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No.366, Main Street,
Passara.

15. Amarasinghe
No.368, Main Street,
Passara.

16. E. V. Karthigesu (deceased)

16a. E. V. K. Nagendram Sathkunarajah

17. Rajeswari Nagendram
Both of: No.305, Main Street,
Passara.

DEFENDANTS-RESPONDENTS-RESPONDENTS

Before: Kumudini Wickremasinghe J.

Janak De Silva J.

Sobhitha Rajakaruna J.

Counsel: Manohara De Silva PC. with Boopathy Kahathuduwa and Kaveesha Gamage for the 2nd Defendant-Petitioner-Appellant

Rohan Sahabandu PC. With Chathurika Elvitigala, Sachini Senanayake and Pubudu Weerasuriya for the Plaintiff-Respondent-Respondent

Argued on: 01.04.2025

Decided on: 19.09.2025

Sobhitha Rajakaruna J.

The Plaintiff- Respondent-Respondent ('Plaintiff') filed the Partition Action No. P/273 in the District Court of Badulla against the Defendants-Respondents-Respondents ('Defendants'), including the 2nd Defendant- Petitioner-Appellant ('2nd Defendant'). The Plaintiff's late father had filed a Partition Action bearing No. P/9298 ('1st Partition case') previously in the District Court of Badulla and sought to partition the same land, which is the corpus of the 2nd Partition case bearing No. P/273 ('2nd Partition case'). The 1st Partition case ('P/9298') was dismissed by the District Court on the basis that the pedigree had not been proved and the corpus had not been identified. Upon an Appeal lodged against the said Judgement, the Court of Appeal affirmed the said Judgement of the District Court.

The Plaintiff instituted the 2nd Partition case ('No. P/273') in the same District Court only after the said dismissal of the 1st Partition case. In the said case, the District Court initially considered the matter based on the principle of res judicata, and the primary question was as follows: "Can the Plaintiff maintain the action on the principle of res judicata in view of the Judgement in case No. P/9228 which has been recorded as an admission by the parties to the action?". The District Court, delivering its Order, dismissed the plea of res judicata raised by the said 2nd Defendant and fixed the case for further trial. The 2nd Defendant filed a Leave to

Appeal application against the said Order of the District Court, and accordingly, the Provincial High Court of the Uva Province holden in Badulla ('High Court'), exercising civil appellate jurisdiction dismissed such Application, affirming the Order of the District Court.

Being aggrieved by the said Order of the High Court, the 2nd Defendant instituted these proceedings seeking to get both Judgements in the High Court and the District Court varied. This Court granted Leave to Appeal as per the contents of paragraphs 18(c), 18(d) and 18(e) of the Petition (dated 26.01.2015) of the 2nd Defendant. Accordingly, the questions can be formulated as follows:

a) Did the learned Judges of the High Court and the learned District Judge fail to correctly apply and/or examine the provisions of Section 75 (1) of the Partition Law?

b) Did the learned Judges of the High Court and the learned District Judge fail to correctly apply and/or examine the provisions of Section 207 of the Civil Procedure Code?

c) Did the learned Judges of the High Court and the learned District Judge err by holding that the previous action bearing No. D.C. Badulla P/9298 had not been dismissed on the merits when in fact the said action was dismissed inter alia on the basis that the Plaintiff had failed to establish his title at the conclusion of a lengthy trial?

The broader question that needs to be resolved by this Court is whether a plaintiff in a partition action can initiate a fresh partition action if their initial action was dismissed after trial due to failure to prove title and identify the corpus.

The primary contention of the 2nd Defendant is that the learned Judges of the High Court and the learned District Judge failed to apply correctly and/or examine the provisions of Section 207 of the Civil Procedure Code and Section 75(1) of the Partition Law. Apart from the emphasis placed in the Evidence Ordinance on the doctrine of res judicata, the Civil Procedure Code too has placed substantial emphasis on the necessity for the operation of the said doctrine concerning the procedure on civil litigation, specifically in Sections 24, 207 and 406 of the Civil Procedure Code.

The said Section 207 declares that 'all decrees passed by the court shall, subject to appeal, when an appeal is allowed, be final between the parties; and no plaintiff shall hereafter be non-suited'. Whereas Section 75(1) of the Partition Law stipulates that 'the dismissal of a partition action in respect of any land under section 9, section 12, section 29, section 62, section 65 or section 70 shall not operate as a bar to the institution of another partition action in respect of that land'. Accordingly, the 2nd Defendant contends that if a partition action is dismissed for reasons other than those outlined in Section 75(1), particularly after a trial, it prevents the filing of a second partition action concerning the same corpus.

The 2nd Defendant further argues that the said Section 75(1) of the Partition Law, read together with Section 207 of the Civil Procedure Code, provides that all decrees in partition actions are final, except for dismissals under Sections 9, 12, 29, 62, 65, or 70. It is submitted on behalf of the said Defendant that any other decree under any other Section operates as res judicata, barring a subsequent action on the same cause of action between the same parties. The 2nd Defendant relies on the precedent enunciated in ***Nandawathie and Others v. Tikiri Banda Mudalali (2003) 2 Sri LR 347,*** in which it was held that the principle of res judicata will apply where the 2nd action is a.) Between the same parties; b.) Same subject matter; and c.) Same cause of action. Additionally, the 2nd Defendant asserts that the High Court and the District Court erred by applying principles enshrined in the case of ***Kandavanam v. Kandaswamy 57 NLR 241,*** in which it was discussed whether res judicata would apply under Section 406 of the Civil Procedure Code in an instance where the Plaintiff has failed to obtain leave to file a fresh action.

In contrast, the Plaintiff submits that the cause of action in partition actions is a recurring cause. In ***Abeysundera v. Babuna 26 NLR 459,*** the court held that:

> *"If one regards a partition action as an action founded on some cause, even if it be not such a cause as falls within the: definition in section 5 of the Civil Procedure Code, then the cause of action would seem to be a recurring one, that is, it is due to a continuance of the common ownership, which exists from day to day as the inconvenience of common ownership recurs day by day".*

The Plaintiff argues that the principle of res judicata embodied in Section 207 would apply to partition cases as a *casus omissus* provision in Section 79 of the Partition Law. The said Section 79 provides as follows:

> "In any matter or question of procedure not provided for in this Law, the procedure laid down in the Civil Procedure Code in a like matter or question shall be followed by the court, if such procedure is not inconsistent with the provisions of this Law."

The Plaintiff contends that Section 79 of the Partition Law provides that for any procedural matter or question not addressed in the Partition Law, the procedures outlined in the Civil Procedure Code should be applied, provided they are consistent with the provisions of the Partition Law. Additionally, the Plaintiff emphasises that Section 75 of the Partition Law pertains to specific instances occurring before the case reaches the trial or judgment stage, or after judgment, which can be considered by anyone as pre-trial stages, except for instances under Section 70 ('non-prosecution of a partition action') of the Partition Law. It is highlighted that even the said Section 70 of the Partition Law does not pertain to a stage where the case has reached finality.

The Plaintiff argues that Section 79, in conjunction with Section 75 (which identifies specific sections allowing further Partition action after dismissal), enables other provisions of the Civil Procedure Code, such as Sections 34, 207, and 406, to be applied in post-trial scenarios or after a judgment/ decree has been issued. It is noted that the Plaintiff's above submissions on the said Sections 34, 207 and 406 of the Civil Procedure Code are on precluding a party from bringing a fresh action, a phenomenon embodied in those sections. Consequently, the Plaintiff contends that Section 79 supersedes Section 75 and Sections 34, 207, and 406 applicable to 'decrees' issued under the Partition Law, as supported by case law.

According to its preamble, the Partition Law provides for the partition and sale of land held in common and for matters connected therewith or incidental thereto. Section 2 of the Partition Law declares that, where any land belongs in common to two or more owners, any one or more of them, whether or not his or their ownership is subject to any life interest in any other person, may institute an action for the partition or sale of the land in accordance with the provisions of the said Law. The case of ***Mariam Beebee v. Seyed Mohamed 68 NLR 36***

highlights the unique nature of partition actions, where each party serves dual roles as plaintiff and defendant. The Partition Law aimed at alleviating inconvenience due to undivided possession, but often entailed contests over title. The Court in the said ***Mariam Beebee*** case states that:

> *"One reason is, I think, that a partition action has always been recognised as having a special character, in that every party has the double capacity of plaintiff and defendant. Though in theory it is merely a proceeding by one or more admitted co-owners against the remaining co-owners, to obtain relief from the inconvenience of undivided possession, in practice it often involves a contest as to title-see* ***Lucihamy v. Hamidu [(1923) 26 N. L.R 41.].***"

The Plaintiff cites the dicta in ***Marshal Perera and Others v. Elizabeth Fernando and Others 60 NLR 229*** as well, underscoring the fundamental entitlement to relief under the Partition Law. The court in the said case held:

> *"The Ordinance presupposes an inherent right in any person who is for the time being a co-owner to secure a divided holding for himself or else, in appropriate circumstances, to obtain his proportionate share in the proceeds of sale of the land. If, therefore, any notion of a 'cause of action' is involved in a partition suit pure and simple, it is this inherent right of a co-owner for the time being which constitutes the 'cause of action'."*

As highlighted above, the Partition Law possesses a distinctive characteristic, and every party involved in such action holds the dual role of both plaintiff and defendant. It is a legal proceeding initiated by one or more co-owners against others to resolve the challenges of undivided possession. Based on such unique features, the Plaintiff argues that if a partition action is dismissed without determining the rights of the parties among themselves, such dismissal cannot be used to employ the principle of res judicata in a later action by the plaintiff to partition the same land. However, if there had been a decision regarding the title or the corpus itself, that would serve as res judicata in a subsequent action. Thus, the Plaintiff contends that he is entitled to have and maintain the aforesaid 2nd Partition case since the District Court in the 1st Partition case declined to issue a partition decree and did not determine the parties' respective rights and dismissed the case finding that the Plaintiff has failed to prove the 'issues' - 'point of contest' in the Plaint. In this regard, the attention of this

Court was drawn to the following issues framed in the 1st Partition action and the answers of the Court thereto: (vide order dated 15.12.1994 of the District Court of Badulla in case no. P/9298)

1. පැමිණිල්ලේ 2 සිට 15 දක්වා සඳහන් කරුණු හා ඉදිරිපත් කර ඇති පෙළපත හා උරුමය දැක්වීමේ තත්වය මත පැමිණිලිකරු හා මුල් විත්තිකාරිය (1 විත්තිකාරිය) පැමිණිල්ලේ උපලේඛනයේ සඳහන් ඉඩමේ හවුල් අයිතිකරුවෙක්ද?

2. පැමිණිල්ලේ 16 වන ඡේදයේ සඳහන් පරිදි එම ඉඩම පැමිණිලිකරු සහ 1 වන විත්තිකාරිය අතර බෙදා වෙන් කල හැකිද?

3. කොපමණ ප්‍රමාණයක් පැමිණිලිකරුට හා 1 වන විත්තිකාරියට හිමි විය යුතු වේද?

The District Court answered these issues as follows:

1. පැමිණිල්ලේ පෙළපත ඔප්පු කර නැත

2. නොහැකිය

3. පැමිණිල්ල හා විත්තිය විසින් ඔවුන්ට හිමිවිය යුතු කොටස් කොපමණද යන්න නිසියාකාරව ඔප්පු කර නැත

The Plaintiff asserts that, in terms of Section 207 of the Civil Procedure Code, what becomes final between the parties is all decrees passed by the court. The Plaintiff relies on the judgment in ***Aranappu De Silva v. Williams (1939-14 CLW 81),*** which held that Section 207 of the Civil Procedure Code states in unambiguous terms that it is the decree passed by a court that is final between the parties. Wijeyewardene J. in the said case observed:

> *"I find it difficult to assent to the proposition of law as stated by the learned District Judge. Section 207 of the Civil Procedure Code states in unambiguous terms that it is the decree passed by a court that is final between the parties. It is, no doubt true, that frequently the judgment and even the pleadings in an action are examined in order to ascertain the questions of fact and law that have become res judicata by the passing of the decree. This is done for the obvious reason that the decree which states only the relief granted does not show the various questions of fact and law which were put in issue or could have been put in issue between the parties. But where a court*

has to decide a question of res judicata in respect of the shares allotted to the parties in a previous partition action, the decree alone need be considered as it contains normally all the necessary information with regard to the shares".

In this backdrop, the Plaintiff submits that the Partition Law stipulates two types of decrees, namely, 'interlocutory decree' (Section 26) and 'final decree' (Section 36) and thus, the stages enunciated in Sections 9, 12, 29, 62, 65 and 70 of the Partition Law do not fall into the ambit of an interlocutory decree or final decree.

At this stage, I need to examine the scope of the trial in a partition action that is stipulated in Section 25(1). Accordingly, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which the action relates, and shall consider and decide which of the orders mentioned in section 26 should be made. Section 26(1) declares that at the conclusion of the trial of a partition action, the court shall pronounce judgment in open court. As soon as may be after the judgment is pronounced, the court shall enter an interlocutory decree in accordance with the findings in the judgment. As per Section 26(2) the interlocutory decree may include one or more of the following orders, so however that the orders are not inconsistent with one another: (a) order for a partition of the land; (b) order for a sale of the land in whole or in lots; (c) order for a sale of a share or portion of the land and a partition of the remainder; (d) order that any portion of the land representing the share of any particular party only shall be demarcated and separated from the remainder of the land; (e) order that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties; (f) order that any specified portion of the land sought to be partitioned or surveyed be excluded from the scope of the action; (g) order that any share remain unallotted.

In terms of Section 36, on the date fixed pursuant to Section 35, or on any subsequent date which the Court may fix for the purpose, the Court may, after summary inquiry: (a) confirm with or without modification the scheme of partition proposed by the surveyor and enter final decree of partition accordingly; (b) order the sale of any lot.

It is noted that the Judgement dated 15.12.1994 in the 1st Partition case (Case No. P/9298) was not followed by an interlocutory decree in accordance with the findings in the Judgement as mandated in Section 26(1) of the Partition Law. The District Court in the said judgement dated 15.12.1994 has not tried and determined all questions of law and fact arising in that action in regard to the 'right', 'share', or 'interest of each party' to, of, or in the land to which the action relates, and considered and decided which of the orders mentioned in section 26 should be made. In light of the above and based on the circumstances of this case, it can be presumed that the said purported judgment in the 1st Partition case doesn't fall within the decrees described in Sections 26 or 36 of the Partition Law.

Now I need to explore the effect of the doctrine of res judicata and its relevance to the aforesaid 2nd Partition case. The doctrine of res judicata can be primarily understood through the following paragraph in ***Randenigala Distilleries Lanka (Private) Limited v. Distilleries Company of Sri Lanka- SC (CHC) Appeal No. 38/2010 (decided on 19.12.2014)***, where the Supreme Court observed as follows:

> *"The concept of res judicata is a well-established principle of law designed to protect a party from having to entertain repetitive legal attacks on the grounds of an issue that has already been decided in full and final settlement by a court of law. Attempts of this kind under the smokescreen of being a fresh issue are frowned upon and cannot be entertained by courts, for such actions seek to discredit and abuse the finality of the legal process."*

Hence, the general principle is that once a court has tried an issue and delivered a final decision, the parties cannot bring a fresh action on the same issue. His Lordship Justice Janak De Silva, whilst in the Court of Appeal in ***Saundra Marakkala Imasha Lahiruni Upeksha v. Hasitha Kesara Weththimuni- CA (Writ) 166/2017 (decided on 04.04.2019),*** states that 'the doctrine of res judicata prohibits the setting up of a cause of action which has been already determined by a court of competent jurisdiction as between the same parties or their representatives in interest'. Furthermore, in the said case, the Court identifies that Section 40 of the Evidence Ordinance gives effect to the concept of Res Judicata. The said Section 40 reads:

"The existence of any judgment, order, or decree, which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is, whether such court ought to take cognizance of such suit or to hold such trial."

The requirements for the operation of the doctrine of res judicata have been highlighted to a considerable extent in the paragraphs cited above. Thus, having the same parties and the same causes of action is necessary. In further giving effect to the doctrine of res judicata, His Lordship Justice Janak De Silva in the case of ***Centre for Environmental Justice (Guarantee) Ltd. v. Anura Satharasinghe, Conservator General, Department of Forest Conservation and Others- CA (Writ) 291/2015 (decided on 16.11.2020),*** opined that;

"This Court has had the benefit of perusing the pleadings filed in S.C.F.R. 130/2017 since they have been filed of record in this application. I observe that the Petitioner in this case was not a party to that application. Hence the doctrines of res judicata or issue estoppel do not apply as in both instances it is necessary that the parties to the two cases and the cause of action (or issue estoppel as in this case) must be the same for the two doctrines to apply. [Ran Menika v. Gunasena and Another [C.A. 471/2000(F), C.A.M. 23.09.2019]."

The Court of Appeal in the above case referred to 'cause of action estoppel' and 'issue estoppel'. It is vital to address the principle of functus officio, which is central to determining whether litigants should be limited to a single opportunity to present their case. This umbrella concept of functus officio encompasses key elements such as res judicata, estoppel, abuse of court process, the prohibition against collateral attacks, and waiver. When addressing functus officio, it is important to recognize that its purpose is to ensure finality while concluding judicial proceedings. The concept of issue estoppel is regarded as a subset of res judicata. The concept of estoppel can be divided into two types: (i) cause of action estoppel and (ii) issue estoppel. Notably, issue estoppel extends beyond a specific cause of action, preventing the relitigating of issues already resolved by a competent court in later proceedings. Cause of action estoppel refers to a situation where legal claims and obligations between parties, tied to a specific cause of action, have been adjudicated in a prior case.

The Supreme Court in ***Nuwara Eliya District Housing Development Co-operative Society Ltd v. Kelani Valley Plantations PLC (formerly Kelani Valley Plantations Limited) and Another- SC***

Appeal No. 70/2015 (SC Minutes of 03.04.2024) has drawn attention to the possibility of applying issue estoppel not only to civil cases but also to judicial review. His Lordship Justice Janak De Silva observed:

> *"In **Jayanthu Ralalage Ranmenika v. Kiribandage Yogarathne and Others [C.A. Appeal No. 471/2000(F)**, **decided on 23.09.2019]** I had to consider the applicability of issue estoppel in Sri Lanka and concluded that as issue estoppel is part of English Law of Evidence in civil cases, it is part of our law in civil cases in view of section 100 of the Evidence Ordinance. Nevertheless, it must be considered whether proceedings for judicial review is a civil case in that sense"*

Finality is a fundamental and universally accepted requirement in judicial proceedings. Without it, the same issue or the cause of action could be endlessly relitigated, preventing resolution. The overarching principle of functus officio is central to determining whether parties should be limited to a single opportunity to litigate. Anyhow, I am of the view that when applying functus officio, the aim of the court should be to ensure finality while maintaining fairness in judicial proceedings. In the case of ***Rajapaksha Appuhamilage Lionel Ranjith v. Suraweera Arachchige Dona Leelawathi and Others (SC Appeal /100/2020, SC Minutes of 14.05.2025)***, the Supreme Court analysed global legal trends, referencing the English Court of Appeal case ***Worldwide Corporation Ltd v. GPT Ltd (1988 EWCA Civ 1894)***. The English court, led by Lord Bingham, Peter Gibson, and Waller L.J., emphasised "overall justice over individual justice," highlighting that delays in resolving cases undermine the judicial system's efficacy and the interests of all court users.

The intricacies of court proceedings require a balanced approach that weighs both legal technicalities and the wider principles of fairness and justice. This ensures that litigants' legitimate rights are protected, reducing the risk of injustice due to procedural mistakes, judicial biases, or misapplication of legal doctrines. Thus, when implementing the finality doctrines mentioned earlier, it is essential to balance the pursuit of justice with the unique circumstances of each case.

For comprehensive and fair adjudication, courts must prioritise whether a litigant's legitimate rights have been affected. Legal theories, principles, and doctrines exist to support judges in

fulfilling such responsibilities. If a litigant leaves the court with a lingering sense of unresolved grievance after litigation, it undermines the effective application of the Rule of Law, Justice, and Equality. Preliminary objections of a technical nature often emerge in routine court proceedings. The superior courts have increasingly evaluated these objections by focusing on case-specific circumstances rather than rigid adherence to traditional legal theories or doctrines. Fairness and reasonableness should consistently be afforded to litigants who may be adversely impacted by such factors. Conversely, no litigant should be granted the privilege of exploiting the concept of functus officio under the pretext of fairness and reasonableness when applying such doctrines.

According to Section 25(1) of the Partition Law, a court in a partition action must examine each party's title, hear evidence, and determine all questions of law and fact related to the parties' rights, shares, or interests in the land, before deciding on orders outlined in Section 26, such as partition, sale, or other arrangements. As observed previously, section 26(1) requires the court to pronounce a judgment and enter an interlocutory decree based on its findings, while Section 36 allows the court to confirm a partition scheme and enter a final decree of partition or order a sale, after a summary inquiry. It is observed that the plaintiff in the 1st Partition case (who was the father of the Plaintiff of the 2nd Partition case) failed to prove the "issues" or "points of contest" outlined in the respective plaint, and no interlocutory decree (under Section 26) or final decree (under Section 36) was entered. The District Court in the 1st Partition case dismissed (purported judgment dated 15.12.1994) the action without issuing a partition decree or determining the parties' respective rights, shares, or interests in the land. Since the judgment in the 1st Partition case did not address the parties' rights or issue a decree under Sections 26 or 36, it does not constitute a final determination of the parties' interests in the land.

As evident from the aforementioned judicial precedents, the Partition Law recognises the inherent right of a co-owner to seek a division of property or a share of sale proceeds, which ordinarily constitutes the notion of "cause of action" in a partition suit. Hence, I take the view that the concept of 'cause of action estoppel' or 'issue estoppel' should not be employed in the 2nd Partition case, as the said case cannot be construed as relitigating of issues already resolved by the District Court in the 1st Partition case. However, the doctrine of res judicata cannot be

completely barred from being employed to partition cases, and its application should be evaluated based on the specific circumstances of each case, particularly in relation to the concepts of 'cause of action estoppel' or 'issue estoppel.'

On a careful consideration of the circumstances of the whole matter, I have come to the conclusion upon the special circumstances of this case and the unique characteristics of the Partition Law, the doctrine of res judicata should not bar the Plaintiff from proceeding with the 2nd Partition case. For the reasons given above, I answer all three questions of law in the negative. The Judgements of the High Court and the District Court are hereby affirmed and the instant Appeal is dismissed without costs.

Judge of the Supreme Court

Kumudini Wickremasinghe J.

I agree.

Judge of the Supreme Court

Janak De Silva J.

I agree.

Judge of the Supreme Court