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

In the matter of an Application for Special Leave to Appeal

1B,16A. Edirisingha Mudiyanselage Arachchilage Kanthi Manika of Wamulla Junction, Walpola, Bamunakotuwa.

S.C. Appeal No. 115/2013

S.C. (S.P.L.) (L.A.) 208/2012

CA 159/97 (F)

D.C. Kurunegala 5340/P

19. Jayasingha Mudiyanselage Heenmanika of Walpola, Bamunakotuwa (deceased).

19A. Edirisingha Mudiyanselage Arachchilage Kanthi Manika of Wamulla Junction, Walpola, Bamunakotuwa.

DEFENDANTS – APPELLANTS -

APPELLANTS

Vs.

Edirisingha Mudiyanselage Herath Banda of Kalugamuwa Road, Bamunakotuwa near School, Bamunakotuwa.

SUBSTITUTED PLATINTIFF – RESPONDENT -

RESPONDENT

2A. W.M. Herath Banda of Kadihare, Bamunakotuwa.

3A. Andasuriya Mudiyanselage Herath Banda of Walpola, Bamunakotuwa.

4A. Edirisingha Mudiyanselage Sirisena of Thibbatupitiya, Kudagalgamuwana.

5. Edirisingha Mudiyanselage Arachchilage Ukku Amma of Wevewelayaya, Ibbagamuwa.
6. H.M. Appuhamy of C/O H.M.N.N. Herath in front of 125th Post, Pamunugama, Pulathisigama, Polonnaruwa.
7. Andasuriya Mudiyanselage Piyasena of Walpola, Bamunakotuwa.
8. Andasuriya Mudiyanselage Sittamma of Walpola, Bamunakotuwa.
9. Andasuriya Mudiyanselage Dissanayaka of Kadihare, Bamunakotuwa.
10. Andasuriya Mudiyanselage Rajohamy alias Padmawathie Manike of Lenapelassa, Kosdeniya.
11. Andasuriya Mudiyanselage Nandawathi Manike of Wegama, Rathmale, Uhumiya.
12. Andasuriya Mudiyanselage Seelawathi Manike of Wegama, Rathmale, Uhumiya.

13. Andasuriya Mudiyanselage Somawathie Manike of Wegama, Rathmale, Uhumiya.

14. Andasuriya Mudiyanselage Kusumawathie Manike of Walpola, Bamunakotuwa.

15. Andasuriya Mudiyanselage Gunathilake of Walpola, Bamunakotuwa.

DEFENDANTS – RESPONDENTS – RESPONDENTS

17. Edirisingha Mudiyanselage Arachchilage Somapala of 171, Koslanda, Kadihare, Bamunakotuwa.

18. Edirisingha Mudiyanselage Arachchilage Jayasena of Koslanda, Kadihare, Bamunakotuwa.

DEFENDANT – APPELLANT – RESPONDENTS

Before: **S. Thurairaja, P.C., J.**
Janak De Silva, J.
Achala Wengappuli, J.

Counsel: Harsha Soza, PC with Zahara Hassim for the 1B and 16A Defendants – Appellants – Appellants.

Niranjan De Silva for the Substituted Plaintiff–Respondent – Respondent.

Argued on: 30.11.2022

Decided on: 08.09.2025

Janak De Silva, J.

The Plaintiff-Respondent-Respondent (Plaintiff) instituted this action to partition the corpus identified as *Aswaddume Kumbura* containing *දෙපෑල පල්ලහක් පමණ වපසරිය* of paddy sowing. In the schedule of the plaint filed in 1974, the corpus is described as follows:

> *වයඹ පලාතේ කුරුණෑගල දිස්ත්‍රික්කයේ දෙවමැදි හත්පත්තුවේ, වල්ගම්පත්තු කෝරළේ වල්පොල පිහිටා තිබෙන වී දෙපෑල පල්ලහක් පමණ වපසරිය ඇති ඇස්වැද්දුමේකුඹුරට මායිම් **උතුරට** :- ගල්කන්ද ද, දැනට ප්‍රසිද්ධ පාර සහ ඒ. ඇම්. කරුනාතිලකට අයිති වායාගොල්ලේ වත්ත ද, **නැගෙනහිරට** :- පින්වා නයිදේගේ සහ තවත් අයගේ කුඹුරට ඉන්නියරද, දැනට ඒ. ඇම්. කරුණාතිලකට අයිති වායාගොල්ලේ වත්තද, **දකුණට** :- මැණික්හාමිගේ කුඹුරට ඉන්නියරද, දැනට රුක්අත්තනගහමුල පිල්ලෑව සහ ඒ.ඇම්. කරුණාතිලකට අයිති පහල බඩහැලයාගම කුඹුරේ ඉන්නියරද, **බස්නාහිරට** : බණ්ඩිරාල ගම් ආරච්චිලට අයිති හේනට ගල්ඇන සහ වැකන්දද දැනට ඊ. ඇම්. අබේසේකර සහ ඊ. ඇම්. හේරත් බන්ඩා යන අයට අයිති වාම්මුල්ල වත්ත සහ ගල්ඇනද යන මායිම් තුල නොබෙදූ තුනෙන් එක පංගුව සහ ඊට අයිති ගසකොල පලතුරු ආදි සියළුම දේත් සමඟ වේ.*

According to the Plaintiff, Bandirala was at one time the owner of the corpus. He had three children named Appuhamy, Hethuhamy and Punchi Menika. Bandirala died intestate. Accordingly, Appuhamy, Hethuhamy and Punchi Menika each inherited an undivided 1/3 share of the corpus.

By deed No. 7808 dated 31.08.1921 (P1) and attested by C.P. Senayanake, Notary Public, Appuhamy sold his undivided 1/3 share to his two children, Dingiri Menika and Ukku Menika. They sold their shares to the Plaintiff by deed No. 33, attested by O.G.W. Dassanayake dated 06.07.1968 (P5).

According to the Plaintiff, Hethuhamy died intestate and his share was inherited by the 1st to 6th Defendant-Respondent-Respondents (1st to 6th Defendants).

Punchi Menika died intestate leaving her son Punchi Banda who inherited her undivided 1/3 share of the corpus. He also died intestate leaving as his heirs' 7th to 15th Defendant-Respondent-Respondents (7th to 15th Defendants).

The main contest between the parties was the identity of the corpus.

The learned trial judge held that the corpus was correctly identified and entered interlocutory decree accepting the pedigree presented by the Plaintiff.

Aggrieved by the judgment of the District Court, the 1A (16), 17th, 18th and 19th Defendants appealed to the Court of Appeal. The Court of Appeal affirmed the judgment of the District Court.

Aggrieved by the judgment of the Court of Appeal, 1B (16A) and 19th Defendant-Appellant-Appellants (Appellants) appealed to this Court. Special leave to appeal was granted on the questions of law set out in paragraph 26 of the petition.

Nevertheless, during the argument, parties agreed to limit the appeal to the questions of law set forth in paragraph 26 (b), (c) and (d). They are as follows:

(1) In the circumstances pleaded, is the Court of Appeal correct in holding that there is sufficient evidence to identify the corpus and that the land shown in the preliminary plan consist of the corpus?
(2) Has the Court of Appeal considered the fact that the Plaintiff had not established his pedigree by leading cogent evidence?
(3) Since the learned District Judge had not answered the points of contest raised at the trial, and also due to the fact that the learned District Judge had not analysed and evaluated the evidence adduced at the trial in the correct

perspective, is the judgment of the learned District Judge compliant with the provisions in Section 187 of the Civil Procedure Code?

Identity of the Corpus

Section 25 of the Partition Law No. 21 of 1977 (Partition Law) requires the trial judge to examine the title of each party to the land to which the action relates. This duty to investigate the title can only be embarked upon after the corpus is properly identified. Once the corpus is identified, the trial judge must examine the documentary and oral evidence to ascertain the title of each party to the corpus so identified.

There was no admission on the identity of the corpus. The Plaintiff raised a point of contest on whether the corpus sought to be partitioned is depicted as lot Nos. 1, 2 and 3 in plan No. 362. The 1st and 10th Defendants raised a point of contest on whether the land described in the plaint is depicted as lot No. 2B in plan 362. In other words, the 1st and 10th Defendants took up the position that the partition action must be limited to lot No. 2B in plan 362.

Plan No. 362 was prepared by W.C.S.M. Abeysekera, Licensed Surveyor after a preliminary survey. According to it, the total extent of the corpus is 3A 3R 12P. Lot 2B therein is 1A 0R 25P in extent.

The Appellants contend that according to the schedule to the plaint, the corpus to be partitioned is *වී දෙපෑල පල්ලහක් පමණ වපසරිය* which is the English equivalent to 1A 2R 10P.

In ***Ratnayake and Others v. Kumarihamy and Others*** **[(2002) 1 Sri LR 65 at 68]** Weerasuriya, J., after referring to Ceylon Law Recorder, vol. XXII, page XLVI held:

> *"However, it is to be noted that this system of land measure computed according to the extent of land required to sow with paddy or Kurakkan vary due to the interaction of several factors. The amount of seed required could vary according to*

the varying degrees of fertility of the soil, the size and quality of the grain, and the peculiar qualities of the sower. In the circumstances, it is difficult to correlate sowing extent accurately by reference to surface areas."

In fact, the Plaintiff-Respondent-Respondent makes a similar contention in explaining the discrepancy between the actual extent of the corpus and the extent set out in the schedule to the plaint.

I am in respectful agreement with the proposition that the system of land measure computed according to the extent of land required to sow with paddy or Kurakkan vary due to the interaction of several factors. A ***mere*** discrepancy between this system of measure and the actual extent of the corpus does not necessarily lead to the conclusion that the corpus in a partition action is not identified.

Inconsistency in extent will not affect the question of identity if the portion of land to be partitioned is clearly identified in the deeds forming the pedigree and can be precisely ascertained.

In deed No. 7808 dated 31.08.1921 (P1), the boundaries of the corpus are identified as follows:

*"වී දෙපෑල පල්ලහක් පමණ වපසරිය ඇති ඇස්වැද්දුමේ කුඹුර මායිම් **<u>උතුරට</u>** :- ගල්කන්ද ද, **<u>නැගෙනහිරට</u>** :- පින්වා නයිදේගේ සහ තවත් අයගේ කුඹුරට ඉන්නියරද, **<u>දකුණට</u>** :- මැණික්හාමිගේ කුඹුරට ඉන්නියරද, **<u>බස්නාහිරට</u>** : බණ්ඩිරාල ගම් ආරච්චිලට අයිති හේනට ගල්ඇන සහ වැකන්ද"*

The next deed No. 368 (P2) dated 01.06.1934 describes the corpus by reference to the same boundaries. Deed No. 15309 (P3) dated 10.02.1938 also has the same boundaries.

The first difference in the boundaries can be seen in Mortgage Bond No. 7814 (P4) dated 12.06.1940, where the northern boundary is identified as *<u>උතුරට</u> :- ගල්කන්ද ද, දැනට වැකන්ද*. The rest of the boundaries remained the same as described in P1, P2 and P3.

The Plaintiff claims title through deed No. 33 (P5) dated 06.07.1968. The boundaries in this deed are the same as the boundaries set out in the schedule to the plaint. There are changes in all four boundaries compared to the boundaries set out in P1, P2 and P3. The Plaintiff testified that he had got the boundaries changed to depict the boundaries that were in existence at the time P5 was executed.

I observe that even by 1968, the corpus had not been surveyed and a plan prepared. In these circumstances, I do not find anything objectionable in P5 setting forth the existing boundaries after referring to the earlier boundaries.

However, the Plaintiff, during his evidence-in-chief testified that there was a dispute when he tried to cultivate part of the corpus in 1968 and at that point of time, the dispute was referred to the Mediation Board. P5 was also executed in 1968.

Moreover, the discrepancy between the extent of the corpus identified in the plaint and the extent identified at the preliminary survey is 2A 1R 2P. This is not a discrepancy that can be explained away by merely referring to infirmities in the use of the traditional Sinhala measures.

The Plaintiff sought to explain the discrepancy by claiming that this was due to the filling up of a lake that was bordering the corpus. The learned District Judge appears to have accepted this explanation.

Nonetheless, in arriving at his decision, the learned District Judge failed to consider a material aspect of the case. The Plaintiff's explanation was that a portion of land, initially situated outside the corpus and forming part of a lake, had subsequently become integrated with the corpus. However, the Plaintiff did not assert a prescriptive title to the corpus in the plaint. Instead, he relied solely upon the deeds produced in evidence and the principles of intestate succession. Despite this, during the formulation of the points of contest, the Plaintiff succeeded in introducing an issue relating to prescription.

Nevertheless, this issue was confined strictly to the land derived under the said deeds and by way of intestate succession. At no point was a prescriptive claim advanced in respect of any land beyond the extent described as 'වී දෙපැල පල්ලහක් පමණ වපසරිය', which was the portion later merged with the corpus.

Significantly, the Surveyor's report regarding the identity of the corpus does not support the Plaintiff's case. Admittedly, in the preliminary plan, the Surveyor has recorded the extent of the corpus as 3A 3R 12P. However, as the preliminary survey was conducted under the Partition Act No. 16 of 1951, the report contains no specific affirmation that the land surveyed and the land sought to be partitioned, as described in the plaint, are one and the same. Accordingly, the Surveyor's report does not conclusively establish the identity of the corpus in favour of the Plaintiff.

In this context, I observe that the District Court had directed the same Surveyor to make a further survey of the land. This appears to have been on the application of the 1st Defendant. This further survey was done on 15.12.1977. His report reads as follows:

"**මිනින්දෝරු වාර්තාව**

මෙම නඩුව යටතේ මා වෙත නිකුත් කර ඇති දින නොමැති නියෝගය අනුව, පාර්ශ්වකරුවන්ට ලිඛිතව දැනුම් දීමෙන් පසුව 1977-12-15 දින මැනීම සඳහා ගියෙමි.

1 වැනි වග උත්තරකරු මෙම නඩුවට අයත් යැයි කියා මායිම් පෙන්වූයේ මා විසින් මීට පෙර මැන අංක 362 දරන පිඹුරේ කැබලි අංක 2 දරන කුඹුරේ කොටසක් පමණයි. එම කොටස මගේ අංක 362 දරන පිඹුරේ පිටපතක කැබලි අංක 2B වශයෙන් පෙන්වා මේ සමග ඉදිරිපත් කරමි. එහි බිම් ප්‍රමාණය අක්කර 1 රූඩ් 0 පර්චස් 00 කි. ඉතිරි කුඹුරු කොටස සහ ගොඩ ඉඩම් මෙම නඩුවට අයත් නැති බව 1 වැනි වග උත්තරකරු තවදුරටත් කියා සිටියේය.

උපලේඛනයේ මුල් කොටසේ විස්තර වන්නේ දෙපැල පල්ලහක පමණ විශාලත්වයක් ඇති කුඹුරක් වුවත් එහි මායිම් දක්වා ඇති අන්දමට පලමුවෙන් මැන ඇති සියලුම ඉඩම් අයත් වේ.

මේ අනුව බලන විට උපලේඛනයෙහි වරදක් ඇති බව පෙනේ. එහෙත් එය බිම් ප්‍රමාණයේද මායිම් වලදැයි මට කිව නොහැක.

මේ සමග පහත සඳහන් ලියකියවිලි ඉදිරිපත් කරමි.

1. පිඹුරු අංක 362 පිටපත (කැබලි අංක 2 නැවත කොටස් කර)

2. වියහියදම් හා ගාස්තු බිල''

The Surveyor ultimately stated that there exists an error in the schedule, and that he is unable to determine whether the said error pertains to the extent or the boundaries of the land. However, the learned District Judge, in reaching his conclusion, relied solely on the earlier portion of the Surveyor's report, while disregarding the Surveyor's express conclusion that he was unable to clarify whether the discrepancy lies in the extent or in the boundaries. This selective reliance on the evidence constitutes a misdirection in law.

The Surveyor, being an expert witness, provided evidence that is pivotal in establishing the identity of the corpus. Both of his reports were admitted into evidence without objection, thereby rendering his entire testimony properly before the Court. Consequently, the learned trial judge was obliged to evaluate the totality of the Surveyor's evidence and assign to it the appropriate probative value. However, in the present case, the learned trial judge erred in law by according weight to only a portion of the Surveyor's evidence while disregarding the remainder.

Upon a consideration of all the evidence led on the identification of the corpus, I hold that the Plaintiff has failed to identify the corpus.

I answer the question of law No. 1 in the negative.

In view of my conclusions on question of law No. 1, there is no necessity to answer the other questions of law.

For all the foregoing reasons, I set aside the judgment of the Court of Appeal dated 04.09.2012 and the judgment of the District Court of Kurunegala dated 26.10.1995.

I have given anxious consideration to whether justice can be served by sending this case back for trial *de novo* or to dismiss the action. However, I have concluded that no purpose can be served by directing a trial *de novo* as the 1st Defendant did at the outset claim that the partition action must be limited to lot 2B in plan 362, which was rejected by the Plaintiff.

Accordingly, I have no option but to dismiss the action. Parties shall bear their costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court