

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

Kariyawasam Katukoliha Gamage  
Metthananda Heraligaswatta,  
Katukoliha,  
Dodanduwa.

Substituted Plaintiff-Appellant-  
Appellant

**SC/APPEAL/1/2018**

**SP/HCCA/GA/104/2006(F)**

**DC GALLE 9634/P**

Vs.

1. Kariyawasam Katukoliha Gamage  
Metthananda,  
Heraligaswatta,  
Katukoliha, Dodanduwa.
2. Dhammadika Kariyawasam  
Jamanegewatta,  
Katukoliha, Dodanduwa.  
Presently at No. 47,  
Galpoththa Road,  
Nawala, Rajagiriya.
3. Wannaku Kankanamge Piyadasa  
(deceased),  
3A. A.W.K. Premaseeli (deceased),  
3B. Badra Samanmali Wannaku Korala  
Hettigewatta,  
Katukoliha, Dodanduwa.

4. Lelwala Gurugamage Ariyasena (deceased),  
Pinkanda, Dodanduwa.
- 4A. Reggie Lelwala Gurugamage,  
Pinkanda, Dodanduwa.
5. Ariyasena Siriwardena *alias* Kariyawasam Katukoliha Gamage Ariyasena Siriwardena,  
Baddegama Road,  
Sudumetiya,  
Katukoliha, Dodanduwa.
- 5A. Kariyawasam Katukoliha Gamage Irnika Lakshri Siriwardena,  
Baddegama Road, Sudumetiya,  
Katukoliha, Dodanduwa.
6. Katukoliha Gamage Abraham Diyas (deceased),  
Heraligaswatta, Katukoliha,  
Dodanduwa.
- 6A. Kariyawasam Katukoliha Gamage Chadrasena Arachchikanda,  
Hikkaduwa.
7. Katukoliha Gamage Pawlis (deceased),
- 7A. Kariyawasam Katukoliha Gamage Saman Arachchikanda, Hikkaduwa.  
Presently at Katukoliha, Dodanduwa.
8. Katukoliha Gamage Gernal (deceased),
- 8A. Kariyawasam Katukoliha Gamage Rathnasiri,  
Katukoliha, Dodanduwa.

9. K.K.G. Dynosiyas Appuhamy  
(deceased),
- 9A. Kariyawasam Katukoliha Gamage  
Ananda (deceased),  
No. 247, Richmond Hill Road,  
Galle.
- 9B. Katukoliha Gamage Tharindu Deshan  
Kariyawasam,  
No. 230/A, Richmond Hill Road,  
Galle.
10. Lelwala Gurugamage Piyasena  
(deceased),
- 10A. Akmeemana Kankanamge Dona Soma  
Abeywickrema,
- 10B. Lelwala Gurugamage Inoka Dilani,
- 10C. Lelwala Gurugamage Nilanthi  
Upendrika,  
All of Pinkanda, Dodanduwa.
11. Lelwala Gurugamage Vinee,
12. Lelwala Gurugamage Anderson,  
Both of Pinkanda,  
Dodanduwa.
13. Helena Panditha Gunawardena,  
“Sirith Sudumetiya”,  
Dodanduwa.
14. Charlotte Siriwardena,  
Kirimetiya, Dodanduwa.
15. Nanayakkarawasan Midigaspege  
David (deceased),
- 15A. P.L. Edmond Jayasiri “Wasana”,  
Halpandeniya,

Ginimellagaha.

16. Madihe Arachchige Wimalawathi Gunawardena (deceased)  
Hettiveediya, Weligama.
17. Kariyawasam Katukoliha Gamage Jayantha Kumara Siriwardena  
Hettiveediya, Weligama.
18. Kariyawasam Katukoliha Gamage Jayanthi Sepalika Siriwardena  
Hettiveediya, Weligama.
19. Kariyawasam Katukoliha Gamage Charlotte Siriwardena,  
Sudumetiya, Dodanduwa.
20. Jayantha Siriwardena,  
No. 154, Old Galle Road,  
Weligama.
21. Katukoliha Gamage Titus,
22. Katukoliha Gamage Jayawathie,
23. Katukoliha Gamage Yasawathi,
24. Katukoliha Gamage Lalitha,
25. Katukoliha Gamage Karunawathi,
26. Katukoliha Gamage Lionel,
27. Katukoliha Gamage Chintha,
28. Katukoliha Gamage Ranjan,
29. Katukoliha Gamage Sunil,  
All of Sudumetiya, Dodanduwa.
30. Vajira Kariyawasam
- 30A. W.K. Premaseeli,  
Sudumetiya, Dodanduwa
31. Upali Kariyawasam (deceased)
- 31A. Kalyani Disanayake

31B.Nadeeka Lakmal Kariyawasam  
31C.Udani Ayesha Kariyawasam  
32. Janaka Kariyawasam  
All of No. 62,  
Galgran Oya,  
Ragala.  
Defendant-Respondent-Respondents

Before: Hon. Justice A.L. Shiran Gooneratne  
Hon. Justice Mahinda Samayawardhena  
Hon. Justice K. Priyantha Fernando

Counsel: W. Dayaratne, P.C. with Ms. Ranjika Jayawardene for the Substituted Plaintiff-Appellant-Appellant.  
Rohan Sahabandu, P.C. with Ms. Chathurika Elvitigala for the 5A and 17<sup>th</sup> Defendant-Respondent-Respondents.  
S. Gurugalgoda for the 10A and 10B Defendant-Respondent-Respondents.  
Daya Guruge with Kanaka Sivapathasundaram for the 15A Defendant-Respondent-Respondent.

Argued on: 27.10.2025

Written submissions:

By the 15A Defendant-Respondent-Respondents on  
18.09.2018

By 5A and 17<sup>th</sup> Defendant-Respondent-Respondents on  
03.06.2019

By Substituted Plaintiff-Appellant-Appellant on 04.05.2021

Decided on: 05.12.2025

**Samayawardhena, J.****Introduction**

The plaintiff filed this action naming ten defendants as parties, seeking partition of the land known as *Danwatte Kumbura alias Danatte Kumbura alias Ratmehera Danatte Liyadde Kumbura* among the plaintiff and the 1<sup>st</sup> to 10<sup>th</sup> defendants. The number of defendants was later increased to thirty two. The Preliminary Plan No. 2286 consists of four Lots, namely Lots A to D.

After trial, the learned District Judge excluded Lots B and C and confined the land to be partitioned to Lots A and D, which was partitioned among the plaintiff and the 1<sup>st</sup> to 10<sup>th</sup> defendants. In the judgment, the learned District Judge varied the allocation of shares slightly from what was set out in the plaint.

Being dissatisfied with the exclusion of Lots B and C from the corpus, the plaintiff preferred an appeal to the High Court of Civil Appeal, which dismissed the appeal. Hence, this appeal to this Court.

**Exclusion of lot B**

The 15<sup>th</sup> defendant filed a statement of claim asserting that Lot B in the Preliminary Plan was a different land known as *Duwe Addara Kumbure Kebella*. He claimed title to Lot B on the basis of several deeds, which were produced at the trial marked 15D1 to 15D11. According to those deeds, *Duwe Addara Kumbura* is a land in extent of one *Amunam* of paddy-sowing area. Learned Counsel for the 15<sup>th</sup> defendant accepted that one *Amunam* of paddy-sowing area is equivalent to 400 perches. However, the extent of Lot B is only 36 perches.

The 15<sup>th</sup> defendant died pending the action, and his children have not taken steps to substitute themselves to proceed with the case. The 15(a)

defendant, a relation of the 15<sup>th</sup> defendant, gave evidence at the trial but failed to explain the discrepancy in extent.

In addition, the boundaries described in the deeds do not tally with those of Lot B in the Preliminary Plan, and the 15(a) defendant has not offered any explanation for this inconsistency either. Notably, the southern boundary of Lot B is the main road, whereas the 15<sup>th</sup> defendant's deeds do not indicate a road as the southern boundary.

From the evidence of the 15(a) defendant, it is also clear that he was not in possession of Lot B.

According to the report on the Preliminary Plan, the deceased 15<sup>th</sup> defendant claimed title to Lot B and its improvements based on Plan No. 1045 dated 23.09.1926. However, that Plan was not produced either to the surveyor or at any stage of the proceedings. The Court may properly draw the presumption that it was not produced because it was unfavourable to the 15<sup>th</sup> defendant's case.

In excluding Lot B in favour of the 15<sup>th</sup> defendant, the learned District Judge relied heavily on Plan No. 2948 prepared for another partition action (DC Galle Case No. 21054) marked P3, and its judgment marked P4. That Plan had been prepared in 1865. The learned District Judge concluded that Lot B in the Preliminary Plan and Lot A in Plan No. 2948 were the same, and that according to the report to the said Plan, Lot A had been claimed by Wattuhamy and Simon as a land known as *Ratmehera Doowa Addara Kumbura*, through whom the 15<sup>th</sup> defendant claimed title.

Although the report to Plan No. 2948 states that Lot A had been claimed by Wattuhamy and Simon as *Ratmehera Doowa Addara Kumbura*, there is nothing in the judgment to indicate that the Court accepted that position. According to the judgment, that partition action was dismissed.

Considering the situation and extent of Lot B, it is unlikely that Lot B constitutes a separate land. By its appearance and location, it forms part of the land to be partitioned.

Seeking exclusion of Lot B on the basis of prescription, while treating it as part of the corpus, is one thing; seeking exclusion of it on the footing that it is a different land altogether is quite another.

On the facts and circumstances of this case, I am not persuaded that there was sufficient evidence to exclude Lot B as a different land, or to hold that it had been acquired by the 15<sup>th</sup> defendant by prescription.

### **Exclusion of lot C**

The 5<sup>th</sup> and 16<sup>th</sup> to 19<sup>th</sup> defendants sought exclusion of Lot C of the Preliminary Plan No. 2286. At the argument before this Court, only the 5<sup>th</sup> and 17<sup>th</sup> defendants were represented by Mr. Sahabandu, P.C. They sought exclusion of Lot C on the basis that it is a different land known as *Ketakalagahawatta*.

The 5<sup>th</sup> defendant filed a separate statement of claim, while the 16<sup>th</sup> to 19<sup>th</sup> defendants filed another. The 5<sup>th</sup> defendant comes within the plaintiff's pedigree and is therefore a co-owner. In the plaint, the plaintiff has apportioned an undivided 12/240 share to the 5<sup>th</sup> defendant.

The 5<sup>th</sup> defendant marked six deeds (5D1 to 5D6) in his evidence. Learned President's Counsel for the 5<sup>th</sup> defendant before this Court stated that only 5D1 and 5D2 relate to the land sought to be partitioned, while the remaining deeds are irrelevant. Although the 5<sup>th</sup> and 16<sup>th</sup> to 19<sup>th</sup> defendants took up the position before the District Court and the High Court that Lot C is a different land known as *Ketakalagahawatta*, learned President's Counsel for the 5<sup>th</sup> and 17<sup>th</sup> defendants submitted before us that Lot C is also part of the land sought to be partitioned, namely *Danwatte Kumbura*.

*alias Danatte Kumbura alias Ratmehera Danatte Liyadde Kumbura*, and that exclusion is now sought only on the basis of prescription.

The inconsistency in the positions taken before different Courts clearly undermines the credibility and strength of their claim.

The 5<sup>th</sup> defendant, being a co-owner, cannot successfully claim prescriptive title to a portion of the land unless there is strong and convincing evidence establishing prescription. No such evidence has been adduced in this case. The mere claim made before the surveyor with respect to cultivation is insufficient to discharge that burden. I hold that the claim of prescriptive title to Lot C by the 5<sup>th</sup> defendant cannot succeed.

According to the plaintiff's calculation, the 5<sup>th</sup> defendant is entitled to an undivided 12/240 share. However, the learned District Judge, in the judgment, has allotted an undivided 14/240 share to him. The plaintiff does not dispute that finding.

The 16<sup>th</sup> to 19<sup>th</sup> defendants did not give evidence or produce any deeds. On behalf of the 16<sup>th</sup> defendant, a surveyor was called to give evidence. The 17<sup>th</sup> defendant did not even appear before the surveyor as a claimant. There is, therefore, no basis for any claim advanced by the 17<sup>th</sup> defendant.

I am accordingly of the view that Lot C forms part of the corpus and cannot be excluded either as a different land or on the basis of prescriptive possession by any of the parties.

### **Conclusion**

A previous Bench of this Court has granted leave to appeal on several questions of law. The first of them reads as follows:

*Did the High Court of Civil Appeal misdirect itself in holding that the learned District Judge had correctly analysed the evidence pertaining*

*to the exclusion of Lots B and C from the corpus, on the basis that the 15<sup>th</sup>, 5<sup>th</sup>, and 16<sup>th</sup> to 19<sup>th</sup> defendants had clearly established that the said two lots were respectively Duwe Addara Kumbura and Ketakalagahawatta?*

I answer that question of law in the affirmative. In view of that finding, it is unnecessary to consider the remaining questions of law, as they are peripheral and arise within the ambit of the above question.

I hold that Lots B and C of the Preliminary Plan cannot be excluded from the land to be partitioned. Lots A to D together form the corpus, and the corpus shall be divided among the parties in the manner determined by the learned District Judge.

Accordingly, the judgment of the High Court of Civil Appeal is set aside, and the judgment of the District Court is affirmed, subject to the modification that Lots A to D of the Preliminary Plan No. 2286 shall form part of the corpus.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court