

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALISTREPUBLIC OF SRI LANKA.**

Court of Appeal No: **345/97(F)**

D.C. Balapitiya. Case No: 1218

Kalugala Darmasena de silwa  
Urawatta,  
Madampe,  
Ambalangoda.

**Plaintiff Appellant**

Kalugala Lalith Dammika De Silva,  
No. 121/1,  
Urawatta,  
Madampe,  
Ambalangoda

**Substituted Plaintiff Appellant**

**Vs.**

01). Kalugala Soma Gunaratne, nee de Silva  
Wellaboda,  
Madampe,  
Ambalangoda,

And 67 others

**Respondents**

Before : **A.W.A. Salam, J.**

Counsel : A.M.L.Amarasinghe with K.P.  
Fernando for the Plaintiff-  
Appellant

J.P.Gamage for the 36<sup>th</sup> Defendant-  
Respondent

Argued &  
Decided on : 06.08.2012

**A.W.A. Salam, J.**

The plaintiff-appellant has preferred the present appeal against the judgment and interlocutory decree allotting less number of shares from an out of the corpus than what he is entitled to in terms of the proved pedigree. In terms of the judgment the plaintiff appellant should have been declared entitled to an undivided 16270/26880 shares. This share is also shown in the schedule of shares filed by the plaintiff appellant. However for reasons best known to Court, the entitlement of the plaintiff-appellant has been reduced to 12120 shares. On the contrary the 36<sup>th</sup> defendant who is entitled to an undivided 336 shares has been allotted 4486 shares. This has resulted in the plaintiff-

appellant being given reduced shares than what he is entitled to.

No appeal has been preferred by the 36<sup>th</sup> defendant respondent or the other parties. Taking into consideration that the 36<sup>th</sup> defendant has been allotted rights in excess of what he is entitled to. It is my view that the judgment and the interlocutory decree should stand corrected.

Hence, the learned District Judge is directed to correct the allocation of shares in the judgment and interlocutory decree to read as follows;

Plaintiff undivided 16270/26880

36<sup>th</sup> defendant 336/26880.

Rest of the share allocation will remain unchanged.

The learned District Judge is directed to enter amended interlocutory decree and thereafter proceed with the other steps.

There shall be no costs.

**JUDGE OF THE COURT OF APPEAL**

LA/-