

In the court of appeal of the Democratic Socialist  
Republic of Sri Lanka.

Case No: CA 1029/96 F  
DC Ratnapura : 9855/P.

Collin Pulle Victor Pulle,  
Kirimatithanna,  
Balangoda.

**1<sup>st</sup> Defendant-Petitioner-Appellant**

W P R M Wijithawathie,  
Kirimatithanna,  
Balangoda.

W P R M Wimalawathie,  
Kirimatithanna,  
Balangoda

W P R M Heenmanike,  
Kirimatithanna,  
Balangoda

W P R M Wijepala,  
Kirimatithanna,  
Balangoda

**6,7,8,9 Defendant-Petitioner-Appellants**

Kuruppu A Wijewardena,  
Kirimatithanna,  
Balangoda

**Petitioner-Appellant**

**Vs**

**K M Podihamine,  
Kirimatithanna,  
Balangoda**

**Plaintiff-Respondent**

**Josephin Pulle,  
Kirimatithanna,  
Balangoda  
and several others**

**2<sup>nd</sup> to 13 Defendant-Appellants**

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

Parties absent and unrepresented

Decided on: 24.01.2011.

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A.W.Abdus Salam,J

This is a partition action in which judgment and interlocutory decree have been entered as far back as in September 1996. In the meantime the first defendant made an application by way of petition and affidavit, praying that the shares allotted to 10th defendant be re-allotted to him. Similarly, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>,9<sup>th</sup> defendants and the person by the name K A Wijewardena (Petitioner-Appellant) made an application that an undivided 1/35 share be allotted to the said Petitioner-Appellant from and out of the unallotted share of 1/14 share.

the ambit of section 48(4)a of the Partition Act.

Thereafter the learned district judge in the same impugned order had considered the application of the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendant-Petitioners. As has been correctly stated in the judgment, in order to be entitled to unallotted shares the Defendant- Petitioners should have established their rights to them by way of evidence. As they had failed to establish their rights to the unallotted shares or part of it the learned district judge has rightly rejected the claim of 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendant- Petitioner petitioners as well.

On a perusal of the impugned order it appears that the learned district judge has rightly rejected the application of all the appellants and in any event the appellants should have challenged the impugned order by way of and interlocutory appeal. For the above reasons, I am of the firm view that this appeal merits no favourable consideration. Hence, I am compelled to dismiss the appeal. As parties absent and unrepresented, I feel that justice would be met if no order is made with regard to costs.

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Appeal dismissed.

Judge of the Court of Appeal