

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

**In the matter of an application for
leave to appeal**

Olin Mendis,,
76, Police School Road,
Nagoda, Kalutara

Defendant-Petitioner

CA LA 107/2000 F
DC Kalutara 4677/P

Vs.

W Sillinona,
81, Abrew Road, Kalutara

Plaintiff-Respondent

S.Aidis de Silva, ,
Mahawaskaduwa,
Waskaduwa and others

Defendant-Respondent

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

Counsel : M R de Silva with Pubudini Wickramaratna for the
defendant-petitioner, lasitha Chaminda 3A defendant-respondent, Kaushalya
Navaratna for 29A defendant-respondent and C Ladduwahetti for the 28th defendant-
respondent .

Decided on : **03.06.2011**

A W A Salam,J

This is an interlocutory appeal to set aside an order confirming the scheme of partition prepared by the commissioner and admittedly leave has so far not been obtained. Briefly the facts are that the plaintiff-respondent instituted partition action in respect of the corpus known as Dombagahawatta and judgment and interlocutory decree were entered on 8.1.1996 to partition the land among the co-owners as set out in the interlocutory decree. Subsequently, Mr W.S.C.Vithana, the commissioner prepared a scheme of partition bearing No.426 produced in these proceedings as P2. According to the scheme of partition suggested by the commissioner lot 5 has been suggested to be given to 32nd defendant-petitioner whilst lot 7 with the house had been suggested to be given to the 12 defendant. The main grievance of the petitioner is that all the sides of the house on lot 7 other than the south-west opens on to the petitioner's land which is lot 5.

In this matter since one of the boundaries of the subject matter is the seashore, the parties who have been allotted shares by the interlocutory decree have been apportioned their lots adjacent to the seashore by the commissioner.

At the stage of argument it came to light that the buildings on the corpus, particularly the building on lot 5 in P2 had completely got washed away as a result of the Tsunami. In any event, it is trite law the scheme of partition of the commission should not lightly be interfered with unless sufficient grounds are shown. In this matter the commissioner has made every possible endeavour to suggest an equitable and reasonable division of the land and therefore the order of the learned district judge confirming the plan should not be interfered with. For these reasons the leave appeal under consideration stands refused.

There shall be no costs.

Judge of the Court of Appeal