

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

In the matter of an  
application for leave to  
appeal

Court of Appeal No. CALA 453/2005

District Court of Galle No. 11556/P

G. Wimalasuriya

3<sup>rd</sup> Defendant-Petitioner

Vs.

Owis Wimalasuriya

Plaintiff-Respondent

Before: **Eric Basnayake J**

Counsel: H. Withanachchi for the 3<sup>rd</sup> Defendant-Petitioner  
N.R.M. Daluwatte P.C. for the Plaintiff-Respondent

Argued On: 14.3.2011 & 26.4.2011

Written Submissions Tendered On: For the Plaintiff-Respondent: 26.10.2007  
For the 3<sup>rd</sup> Defendant-Petitioner: 30.10.2007

Decided On: 16.5.2011

Eric Basnayake J

The 3<sup>rd</sup> defendant-petitioner (3<sup>rd</sup> defendant) filed this leave to appeal application to have the order dated 19.10.2005 of the learned Additional District Judge, Galle set aside. By this order the learned Judge had confirmed the alternative plan No. 930 of 21.2.2002, prepared by R. Weerasekera, Licensed Surveyor.

The 3<sup>rd</sup> defendant had been allotted lot No. 4 of that plan with access through lot No. 7, which is said to be eight feet wide. The 3<sup>rd</sup> defendant does not complain about these allotments. Lot No.7 falls onto lot No.14. Lot No 14 is a roadway situated outside the corpus. Lot No. 14 is said to be five feet in width and narrower than lot No. 7. The 3<sup>rd</sup> defendant seeks an order to have a roadway as wide as lot 7 along the north eastern boundary of the corpus running towards the north and ending on the railway reservation. However the 3<sup>rd</sup> defendant did not seek such a roadway in the District Court. There was no alternative plan submitted by the 3<sup>rd</sup> defendant showing such roadway. The learned Judge's attention had not been drawn to such an alternative route. What the 3<sup>rd</sup> defendant seeks now is something extraneous.

The learned counsel for the 3rd defendant concedes that this was never the issue in the District Court. For this reason I find the 3<sup>rd</sup> defendant's appeal is without merit and is dismissed. Under the circumstances of this case I do not award costs. Appeal dismissed.

Judge of the Court of Appeal