

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

**CA Appeal No. 855/1998 (F)**

D.C. Ratnapura Case No. 5393/L

1. M.M. Gunaseeli Menike  
of Edandawela.
2. M. Danawathie Menike  
Colombugama, Niwithigala.
3. M.M. Madduma Bandara (deceased)  
Colombugama, Niwithigala.  
3A.SeethaSenanayake  
Colombugama, Niwithigala.
4. M.M. Sumanawathie Menike  
Colombugama, Niwithigala.
5. M.M. Dhanawardana Mawudella  
Noragalla, Daela.
6. M.M. Dhanawardana Mawudella  
(deceased)  
Noragalla, Daela.  
GA. Mudiyanseelage Ranmenike  
Noragalla, Daela.
7. D.P. Podi Bandara (deceased)  
Noragalla, Daela.  
7 A. Ariyapperala Mudiyanseelage  
Maddumahami

Noragalla, Daela.

**PLAINTIFFS**

**vs.**

1. M.M. Podibandara (deceased)  
Colombugama, Niwithigala.
- 1A. M.M. Dingiri Bandara  
Colombugama, Niwithigala.
2. M.M. Lokuhamy  
Colombugama, Niwithigala.
3. M.M. Podimenike  
Colombugama, Niwithigala.
4. E.M. Ranbandara (deceased)  
Pahathgama, Hanwella.
- 4A. E.M. Liliyan  
Pahathgama, Hanwella.
5. S.P.Y. Piyadasa  
Colombugama, Niwithigala.
6. D. Wasthuwa  
Colombugama, Niwithigala.
7. D.W. Ukkuwa  
Colombugama, Niwithigala.
8. P.P.Y. Diyas Appuhamy  
Dannoruwa, Colombugama, Niwithigala.
9. J.M. Podiappuhamy  
Dannoruwa, Colombugama, Niwithigala.
10. Andagamage Anandapala

Niwithigala.

11. D. Lakshman Welikala

Niwithigala.

12. Senarath Jayasoma

Colombugama, Niwithigala.

13. D.M.R. Dhanapala

Colombugama, Niwithigala.

14. W.M. Karunawathie

Watapana, Niwithigala.

15. G.K. John Singho

Colombugama, Niwithigala.

16. W.D. Gunawardane

Colombugama, Niwithigala.

17. P.D. Piyaseeli (deceased)

Colombugama, Niwithigala.

17A. P. Maginona

Colombugama, Niwithigala.

18. E.J. Wijewardane

Watapotha Road, Niwithigala.

19. P.K.P. Johannes

Niwithigala

20. Udayawala Hanarinne Somasiri

Atakalanwatta, Ambalawatta.

21. D. Lakshman Welikala

Niwithigala.

22. K.P.R. Saliya

Niwithigala.

23. Wasthukathonawalayage Ariyaratne

Daela.

24. Wathurawita Mudiyanse Lage Ariyadasa  
Colombugama, Niwithigala.
25. Guruge Dingiri Mahathmaya  
Colombugama, Niwithigala.
26. W.M. Wijayawardane (deceased)  
Guruniwasa,  
Kalawana Madyamaha Vidyalaya.
- 26A. W.M.D. Nalaka Wijayawardane  
Daela.
27. Durayalage Podina  
Colombugama, Niwithigala.
28. Durayalage Adari  
Colombugama, Niwithigala.
29. Durayalage Sedari  
Colombugama, Niwithigala.
30. Weerakone Jayasoma  
No.33, Colombo Road, Ratnapura.
31. Martin Fernando  
Colombugama, Niwithigala.
32. Anton L.W. Tennakone  
Madduma Walauwva, Ratnapura.
33. W.M.D. Nalaka Wijayawardane  
Daela.
34. Seetha Senanayake  
Colombugama, Niwithigala.
35. Ariyapperuma Mudiyanse Lage  
Maddumahamy  
Colombugama, Niwithigala.

**DEFENDANTS**

**AND**

6. D. Washuwa (deceased)  
Colombugama, Niwithigala.
7. D.W. Ukkuwa  
Colombugama, Niwithigala.
27. Durayalage Podina  
Colombugama, Niwithigala.
28. Durayalage Adari  
Colombugama, Niwithigala.
29. Durayalage Sedari  
Colombugama, Niwithigala.

**DEFENDANTS-APPELLANTS**

**vs.**

1. M.M. Gunaseeli Menike  
of Edandawela.
2. M. Danawathie Menike  
Colombugama, Niwithigala.
3. M.M. Madduma Bandara (deceased)  
Colombugama, Niwithigala.
- 3A. Seetha Senanayake  
Colombugama, Niwithigala.
4. M.M. Sumanawathie Menike  
Colombugama, Niwithigala.

5. M.M. Dhanawardana Mawudella  
Noragalla, Daela.
6. M.M. Dhanawardana Mawudella  
(deceased)  
Noragalla, Daela.
- 6A. Mudiyansele Ranmenike  
Noragalla, Daela.
7. D.P. Podi Bandara (deceased)  
Noragalla, Daela.
- 7A. Ariyapperala Mudiyansele  
Maddumahami  
Noragalla, Daela.

#### **PLAINTIFFS-RESPONDENTS**

1. M.M. Podibandara (deceased)  
Colombugama, Niwithigala.
- 1A. M.M. Dingiri Bandara  
Colombugama, Niwithigala.
2. M.M. Lokuhamy  
Colombugama, Niwithigala.
3. M.M. Podimenike  
Colombugama, Niwithigala.
4. E.M. Ranbandara (deceased)  
Pahathgama, Hanwella.
- 4A. E.M. Liliyan  
Pahathgama, Hanwella.
5. S.P.Y. Piyadasa  
Colombugama, Niwithigala.

8. P.P.Y. Diyas Appuhamy  
Dannoruwa, Colombugama, Niwithigala.
9. J.M. Podiappuhamy  
Dannoruwa, Colombugama, Niwithigala.
10. Andagamage Anandapala  
Niwithigala.
11. D. Lakshman Welikala  
Niwithigala.
12. Senarath Jayasoma  
Colombugama, Niwithigala.
13. D.M.R. Dhanapala  
Colombugama, Niwithigala.
14. W.M. Karunawathie  
Watapana, Niwithigala.
15. G.K. John Singho  
Colombugama, Niwithigala.
16. W.D. Gunawardane  
Colombugama, Niwithigala.
17. P.D. Piyaseeli (deceased)  
Colombugama, Niwithigala.
- 17A. P. Maginona  
Colombugama, Niwithigala.
18. E.J. Wijewardane  
Watapotha Road, Niwithigala.
19. P.K.P. Johannes  
Niwithigala
20. Udayawala Hanarinne Somasiri  
Atakalanwatta, Ambalawatta.
21. D. Lakshman Welikala

- Niwithigala.
22. K.P.R. Saliya  
Niwithigala.
23. Wasthukathonawalayage Ariyaratne  
Daela.
24. Wathurawita Mudiyanseleage Ariyadasa  
Colombugama, Niwithigala.
25. Guruge Dingiri Mahathmaya  
Colombugama, Niwithigala.
26. W.M. Wijayawardane (deceased)  
Guruniwasa,  
Kalawana Madyamaha Vidyalaya.
- 26A. W.M.D. Nalaka Wijayawardane  
Daela.
30. Weerakone Jayasoma  
No.33, Colombo Road, Ratnapura.
31. Martin Fernando  
Colombugama, Niwithigala.
32. Anton L.W. Tennakone  
Madduma Walauwva, Ratnapura.
33. W.M.D. Nalaka Wijayawardane  
Daela.
34. Seetha Senanayake  
Colombugama, Niwithigala.
35. Ariyapperuma Mudiyanseleage  
Maddumahamy  
Colombugama, Niwithigala.

**DEFENDANTS-RESPONDENTS**



C.A. 855/98(F)

D.C. Rathnapura Case No.5393/L

Before : K.T. Chitrasiri, J.

Counsel : Anuruddha Dharmaratne with Indika Jayaweera for  
the 6<sup>th</sup>, 7<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup> & 29<sup>th</sup> Defendant-Appellants  
Ranjan Suwandarathne for the 4a, 20<sup>th</sup> & 30<sup>th</sup>  
Defendant-Respondents.

Argued &

Decided on : 17.01.2013

K.T. Chitrasiri, J.

Counsel appearing for the 6<sup>th</sup>, 7<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup> & 29<sup>th</sup> Defendant-Appellants made submissions on their behalf.

Counsel appearing for the 4a, 20<sup>th</sup> & 30<sup>th</sup> Defendant-Respondents also made his submissions.

Both counsel submitted that there are other Appellants who have filed Petitions of Appeal but they are not being represented today. Several notices had been sent by the Registrar of this Court directing them to be present in Court to pursue their appeals. Those other Appellants are the

14<sup>th</sup> & 23<sup>rd</sup> Defendants in the District Court. Counsel also submitted that the grounds of appeal in those appeals also are similar to the grounds that are being argued today. In the light of the above, Court decides to consider the merits of this appeal even though the other Appellants are not present in Court to pursue their appeals.

By this appeal, the Appellants sought to set aside the order of the learned District Judge made on 28.09.1998. By that order, the application made in the Petition dated 31.07.1997 had been allowed. Application made in that petition by three Petitioners, had been made claiming them as the heirs of the original 4<sup>th</sup> defendant.

The aforesaid Petition dated 31.07.1997 was made in terms of Section 48(4) of the Partition Act No. 21 of 1977. Accordingly, learned District Judge should have granted special leave at the first instance in view of Section 48(4) ( c ), before he makes a final order on the said application. Section 48 (4) ( c ) of the Partition Act reads thus:

(c) *If upon inquiry into such application, after prior notice to the parties to the action deriving any interest under the interlocutory decree*

.....

*the court shall upon such terms and conditions as the court in its discretion may impose, which may include an order for payment of costs as well as an order for security for costs, **grant special leave** to the applicant.*

At this stage, both counsel concede that the learned District Judge had over looked granting special leave referred to in the said section 48(4) ( c ) of the Partition Act. They further submit that no such leave had been granted by the learned District Judge in this instance. Therefore, it is clear that the learned District Judge had not followed the procedure referred to in Section 48(4)( c ) of the Partition Act.

However, having considered the reasons in the order dated 28.09.1998, it is now clear that the learned District Judge should have made

an order granting special leave to proceed with the application made by the three Petitioners without making a final order at that stage. Accordingly, having considered the circumstances under which the application made under Section 48(4) ( c ) had been made, this Court varies the order dated 28.09.1998.

Accordingly, this Court makes an order, granting special leave to proceed with the petition dated 31.07.1997. In the circumstances, the learned District Judge is directed to follow the procedure found subsequent to the Section 48(4)( c ) of the Partition Act.

For the aforesaid reasons, the impugned order of the learned District Judge is varied, to the extent mentioned hereinbefore and accordingly, the appeal is allowed to that extent.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL

Cr/-